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Federal Register



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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

SAN FRANCISCO, CA

- WHEN:** November 29; at 9:00 a.m.
- WHERE:** Room 15138,
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San Francisco, CA.
- RESERVATIONS:** Call Mary Walters at the San Francisco Federal Information Center, 415-556-6600.

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- WHEN:** November 30; at 1:00 p.m.
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- WHEN:** December 7, at 9:00 a.m.
- WHERE:** Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
- RESERVATIONS:** 202-523-5240.

Contents

Federal Register

Vol. 54, No. 217

Monday, November 13, 1989

Agricultural Marketing Service

RULES

Lemons grown in California and Arizona, 47195

Oranges (navel) grown in Arizona and California, 47193

PROPOSED RULES

Milk marketing orders:

Southwestern Idaho-Eastern Oregon, 47215

Agriculture Department

See also Agricultural Marketing Service; Cooperative State
Research Service; Farmers Home Administration

NOTICES

Meat and poultry inspection:

Standards and Labeling Division policy memoranda,
47245

Blind and Other Severely Handicapped, Committee for Purchase From

See Committee for Purchase From the Blind and Other
Severely Handicapped

Centers for Disease Control

See National Institute for Occupational Safety and Health

Civil Rights Commission

NOTICES

Meetings; Sunshine Act, 47301

Coast Guard

RULES

Ports and waterways safety:

San Francisco Bay, CA; regulated navigation, 47206

PROPOSED RULES

Equipment, construction, and materials:

Personal flotation device components, 47234

Marine engineering:

Automatic auxiliary boilers, 47228

Commerce Department

See also Export Administration Bureau; Foreign-Trade
Zones Board; International Trade Administration;
National Institute of Standards and Technology;
National Oceanic and Atmospheric Administration

NOTICES

Agency information collection activities under OMB review,
47245

Committee for Purchase From the Blind and Other Severely Handicapped

NOTICES

Procurement list, 1990:

Additions and Deletions, 47258

(2 documents)

Committee for the Implementation of Textile Agreements

NOTICES

Cotton, wool, and man-made textiles:

Taiwan, 47256

Textile and apparel categories:

Correlation with U.S. Harmonized Tariff Schedule, 47257

Cooperative State Research Service

PROPOSED RULES

Food and agricultural sciences national needs graduate
fellowships grants program; administrative provisions,
47306

Customs Service

RULES

Customs brokers:

Permits; user fees, 47203

PROPOSED RULES

Entry process:

Manufacturer/shipper identification required at time of
entry, 47219

NOTICES

Customhouse broker license cancellation, suspension, etc.:
Peterman, Steven T., 47296

Defense Department

NOTICES

Active military service and discharge determinations:

Civilian employees of Philippine Air Depot (December 8,
1941 to February 23, 1945), 47259

Meetings:

DIA Advisory Board, 47259

Education Department

RULES

Educational research and improvement:

Mathematics and science education national program

Correction, 47303

NOTICES

Grants and cooperative agreements; availability, etc.:

State educational agency desegregation program, 47259

Employment Standards Administration

NOTICES

Minimum wages for Federal and federally-assisted

construction; general wage determination decisions,
47275

Energy Department

See also Federal Energy Regulatory Commission; Hearings
and Appeals Office, Energy Department

NOTICES

Environmental restoration and waste management five-year
plan; availability Research, development,
demonstration, testing, and evaluation plan;
availability, 47259

Natural gas exportation and importation:

Conoco Inc., 47260

Environmental Protection Agency

RULES

Air quality implementation plans; approval and
promulgation; various States:

Kentucky, 47210

Mississippi, 47211

Executive Office of the President

See Presidential Documents

Export Administration Bureau**NOTICES****Meetings:**

Computer Systems Technical Advisory Committee, 47246

Farmers Home Administration**RULES****Loan and grant programs:**

Association loans and grants; community facilities, shift-in-land use, irrigation and drainage, and area assistance development planning grants; obsolete regulations removed, 47195

PROPOSED RULES**Program regulations:****Rural development—**

Intermediary relending program; correction, 47216

Federal Aviation Administration**RULES****Airworthiness directives:**

Aerospatiale, 47197, 47199

(2 documents)

Goodyear, 47200

Airworthiness standards:

Normal and transport category rotorcraft; occupant restraint, 47310

Standard instrument approach procedures, 47201

PROPOSED RULES**Airworthiness directives:**

Cessna, 47216

Sikorsky, 47217

NOTICES**Airport noise compatibility programs:**

Barnstable Municipal Airport, MA, 47293

Exemption petitions; summary and disposition; correction, 47303

Organization, functions, and authority delegations:

Minot International Airport, ND, 47294

Federal Energy Regulatory Commission**NOTICES****Natural gas certificate filings:**

Trunkline Gas Co. et al.; correction, 47303

Applications, hearings, determinations, etc.:

Colorado Interstate Gas Co.; correction, 47303

El Paso Natural Gas Co., 47260

Panhandle Eastern Pipe Line Co., 47260, 47261

(2 documents)

Questar Pipeline Co., 47261

Texas Eastern Transmission Corp., 47261

Trunkline Gas Co., 47262

Valley Gas Transmission, Inc., 47262

Federal Maritime Commission**NOTICES****Agreements filed, etc., 47268****Freight forwarder licenses:**

Beverly Hills Transfer & Storage Co., 47268

CARGAMERICAS Forwarding Services, Inc., et al., 47268

R.E. Ardinger, Inc., et al., 47268

Federal Reserve System**NOTICES**

Agency information collection activities under OMB review, 47269

Meetings; Sunshine Act, 47301**Applications, hearings, determinations, etc.:**

Ameritrust Corp. et al., 47270

BMR Financial Group, Inc., et al., 47271

Central Capital Corp. et al., 47270

Fleet/Norstar Financial Group, Inc., 47269

Stichting Amro et al., 47271

Food and Drug Administration**RULES****Human drugs:****Antibiotic drugs—**

Update and technical amendments, 47203

Medical services:**Hematology and pathology devices—**

Transport and storage container; exemption from most current good manufacturing practice requirements, 47205

NOTICES**Food for human consumption:**

Identity standard deviation; market testing—

Pacific salmon, canned; correction, 47303

Meetings:

Advisory committees, panels, etc., 47271

Foreign-Trade Zones Board**NOTICES****Applications, hearings, determinations, etc.:**

Illinois et al.

Maytag large home appliance manufacturing plants, 47246

Washington, 47247

Health and Human Services Department

See Food and Drug Administration; Health Care Financing Administration

Health Care Financing Administration**NOTICES****Medicaid:**

State plan amendments, reconsideration; hearings—
New York, 47273

Hearings and Appeals Office, Energy Department**NOTICES****Deposit fund escrow account (petroleum violations):**

Escrow funds; excess determinations, 47262

Interior Department

See Land Management Bureau

International Trade Administration**NOTICES****Antidumping:**

Fresh cut flowers from—

Ecuador, 47247

Porcelain-on-steel cooking ware from—

China, 47248

Countervailing duties:

Leather wearing apparel from Uruguay, 47251

Portable electric typewriters from Japan, 47249

Applications, hearings, determinations, etc.:

Agriculture Department, Agricultural Research Service, et al., 47251

University of Mississippi Medical Center et al., 47252

University of Texas at Austin et al., 47254

Interstate Commerce Commission**PROPOSED RULES**

Miscellaneous amendments, 47243

NOTICES**Motor carriers:**

Compensated intercorporate hauling operations, 47275

Labor Department

See Employment Standards Administration; Labor Statistics Bureau; Pension and Welfare Benefits Administration

Labor Statistics Bureau**NOTICES****Meetings:**

Labor Research Advisory Council, 47276

Land Management Bureau**NOTICES****Motor vehicle use restrictions:**

Oregon, 47274

Resource management plans, etc.:

Three Rivers Planning Area, OR, 47274

Libraries and Information Science, National Commission**NOTICES**

Meetings; Sunshine Act, 47301

National Commission on Libraries and Information Science

See Libraries and Information Science, National Commission

National Institute of Standards and Technology**NOTICES**Information processing standards, Federal:
(GOSIP) Government Open Systems Interconnection
Profile, 47254**National Oceanic and Atmospheric Administration****RULES****Fishery conservation and management:**

Gulf of Alaska groundfish, 47212

NOTICES**Meetings:**Caribbean Fishery Management Council, 47256
(2 documents)**Permits:**

Endangered and threatened species, 47256

Nuclear Regulatory Commission**NOTICES****Environmental statements; availability, etc.:**

Maine Yankee Atomic Power Co., 47277

Meetings:

Reactor Safeguards Advisory Committee, 47278

Applications, hearings, determinations, etc.:

Northern States Power Co., 47278

Pension and Welfare Benefits Administration**NOTICES****Employee Retirement Income Security Act:**Annual information return/reports; employee benefit
plans filingReporting requirements, noncompliance; rejection
delayed until 1990 plan year, 47277**Personnel Management Office****NOTICES**Agency information collection activities under OMB review,
47279Drug-free Federal workplace establishment (Federal
Personnel Manual Letter 792-19), 47324**Postal Rate Commission****PROPOSED RULES****Practice and procedure rules:**

Contract rates; rulemaking petition, 47223

Presidential Documents**PROCLAMATIONS****Special observances:**

Montana Centennial Day (Proc. 6063), 47191

Public Health ServiceSee Food and Drug Administration; National Institute for
Occupational Safety and Health**Railroad Retirement Board****PROPOSED RULES****Railroad Retirement Act:**

Military service, 47220

Resolution Trust Corporation**NOTICES**

Meetings; Sunshine Act, 47301

Securities and Exchange Commission**NOTICES**

Meetings; Sunshine Act, 47301

Applications, hearings, determinations, etc.:

American Life/Annuity Series et al., 47289

Public utility holding company filings, 47291

Small Business Administration**NOTICES****Applications, hearings, determinations, etc.:**

Southern Berkshire Investment Corp., 47292

State Department**NOTICES****Meetings:**Historical Diplomatic Documentation Advisory
Committee, 47292**Textile Agreements Implementation Committee**See Committee for the Implementation of Textile
Agreements**Transportation Department**

See also Coast Guard; Federal Aviation Administration;

Urban Mass Transportation Administration

NOTICES**Aviation proceedings:**Certificates of public convenience and necessity and
foreign air carrier permits; weekly applications, 47292

Hearings, etc.—

Trans Airlines, 47293

Treasury Department

See also Customs Service

NOTICESAgency information collection activities under OMB review,
47293**United States Information Agency****NOTICES**

Grants and cooperative agreements; availability, etc.:

University affiliations program, 47296

Meetings:

Public Diplomacy, U.S. Advisory Commission, 47300

Urban Mass Transportation Administration**NOTICES**

Environmental statements; availability, etc.:

Fremont-South Bay Area of Alameda and Santa Clara
Counties, CA, 47294**Veterans Affairs Department****PROPOSED RULES**

Loan guaranty:

Veterans Home Loan Program Improvements and
Property Rehabilitation Act; implementation, 47220**Separate Parts in This Issue****Part II**Department of Agriculture, Cooperative State Research
Service, 47306**Part III**Department of Transportation, Federal Aviation
Administration, 47310**Part IV**

Personnel Management Office, 47324

Reader AidsAdditional information, including a list of public
laws, telephone numbers, and finding aids, appears
in the Reader Aids section at the end of this issue.**CFR PARTS AFFECTED IN THIS ISSUE**A cumulative list of the parts affected this month can be found in
the Reader Aids section at the end of this issue.**3 CFR****Proclamations:**

6063.....47191

7 CFR

907.....47193

910.....47195

1823.....47195

1902.....47195

1942.....47195

1948.....47195

Proposed Rules:

1135.....47215

1948.....47216

3402.....47306

14 CFR

27.....47310

29.....47310

39 (3 documents).....47197-

47200

97.....47201

Proposed Rules:

39 (2 documents).....47216,

47217

19 CFR

111.....47203

Proposed Rules:

142.....47219

20 CFR**Proposed Rules:**

212.....47220

21 CFR

430.....47203

436.....47203

440.....47203

442.....47203

446.....47203

455.....47203

864.....47205

880.....47205

33 CFR

165.....47206

34 CFR

208.....47303

38 CFR**Proposed Rules:**

36.....47220

39 CFR**Proposed Rules:**

3001.....47223

40 CFR

52 (2 documents).....47210,

47211

46 CFR**Proposed Rules:**

52.....47228

61.....47228

63.....47228

164.....47234

49 CFR**Proposed Rules:**

1022.....47243

1043.....47243

1044.....47243

1047.....47243

1051.....47243

1058.....47243

1061.....47243

1063.....47243

1067.....47243

1070.....47243

1080.....47243

1081.....47243

1083.....47243

1084.....47243

1085.....47243

1091.....47243

1104.....47243

1136.....47243

1143.....47243

1161.....47243

1167.....47243

1169.....47243

1170.....47243

1331.....47243

50 CFR

672.....47212

Presidential Documents

Title 3—

Proclamation 6063 of November 8, 1989

The President

Montana Centennial Day, 1989

By the President of the United States of America

A Proclamation

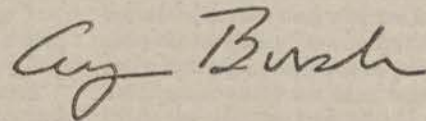
On November 8, 1889, Montana was admitted to the Union as the 41st State. In the century that has followed, the people of Montana have built upon their frontier heritage and made substantial contributions to our Nation's economic and social well-being.

During their famous expedition early in the 19th century, Captains Meriwether Lewis and William Clark introduced this "Big Sky Country" to the world. By wagon train and later by railroad, a rush of homesteaders seized the opportunity to cultivate this new land and enjoy its abundant natural resources. Our Nation's fourth largest State is now home to a number of important industries—such as farming, ranching, mining, and tourism—that utilize its spectacular wealth of forests, prairies, wildlife, minerals, and natural beauty. Montanans are a proud, hardworking, and community-minded people who have added strength and color to the character of America.

In recognition of these contributions, the Congress, by Senate Joint Resolution 19, has designated November 8, 1989, as "Montana Centennial Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim November 8, 1989, as Montana Centennial Day.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of November, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



Official Documents

Document No. 1000

Document No. 1001

Document No. 1002

Document No. 1003

The following is a list of the documents which have been received from the various sources mentioned in the preceding pages. The list is given in the order in which the documents were received, and is not intended to be a complete list of all the documents which have been received from these sources.

The first document is a letter from the Secretary of the Department of the Interior, dated at Washington, D.C., the 1st day of January, 1900. It is addressed to the Secretary of the Department of the Interior, and is signed by the Secretary of the Department of the Interior. The letter is in the name of the Secretary of the Department of the Interior, and is signed by the Secretary of the Department of the Interior.

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John Smith

Rules and Regulations

Federal Register

Vol. 54, No. 217

Monday, November 13, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 693]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from November 10 through November 16, 1989. Consistent with program objectives, such action is needed to balance the supplies of fresh navel oranges with the demand for such oranges during the period specified. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

DATES: Regulation 693 (7 CFR part 907) is effective for the period from November 10 through November 16, 1989.

FOR FURTHER INFORMATION CONTACT:

Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-8139.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Department Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,065 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented 85 percent of the total production in 1988-89. District 2 is located in the southern coastal area of California and represented 13 percent of 1988-89 production; District 3 is the desert area of California and Arizona, and it represented approximately 1 percent; and District 4, which represented approximately 1 percent, is northern California. The Committee's estimate of 1989-90 production is 73,350 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared

with 70,633 cars during the 1988-89 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona navel oranges. The Committee estimates that about 68 percent of the 1989-90 crop of 73,350 cars will be utilized in fresh domestic channels (49,500 cars), with the remainder being exported fresh (10 percent) or processed (22 percent). This compares with the 1988-90 total of 45,581 cars shipped to fresh domestic markets, about 64 percent of the crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to growers. Growers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee at its November 7, 1989, meeting, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are incurred by handlers of navel oranges. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance grower revenue. Prices for navel oranges tend to be relatively inelastic at the grower level. Thus, even a small variation in shipments can have a great impact on prices and grower revenue. Under these circumstances, strong arguments can be advanced as to the benefits to growers, particularly smaller growers.

At the beginning of each marketing year, the Committee submits a marketing policy to the U.S. Department of Agriculture (Department) which discusses, among other things, the potential use of volume and size regulations for the ensuing season. The Committee, in its 1989-90 season marketing policy, considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Schlatter. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate. A "Notice of Marketing Policy" (notice), which summarized the Committee's marketing policy, was prepared by the Department and published in the October 19, 1989, issue of the *Federal Register* (54 FR 42966). The purpose of the notice was to allow public comment on the Committee's marketing policy and the impact of any regulations on small business activities.

The notice provides a 30-day period for the receipt of comments from interested persons. That comment period will end on November 20, 1989. The Department will analyze all comments received, and the analysis will be made available to interested persons. That analysis will assist the Department in evaluating the marketing policy and considering the issuance of weekly volume regulations.

This action is consistent with the 1989-90 marketing policy adopted by the Committee. The Committee met publicly on November 7, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of nine to one with one abstention, that 1,600,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. This amount is 100,000 cartons more than estimated in the tentative shipping schedule adopted by the Committee on October 3, 1989. Of the 1,600,000 cartons, 1,536,000 are allotted for District 1, and 64,000 are allotted for District 3. Districts 2 and 4 are not regulated as they do not have a sufficient quantity of fruit available for current shipment.

During the week ending on November 2, 1989, shipments of navel oranges to fresh domestic markets, including Canada, totaled 782,000 cartons compared with 230,000 cartons shipped during the week ending on November 3, 1988. Export shipments totaled 92,000 cartons compared with 0 cartons shipped during the week ending on

November 3, 1988, and processing and other uses accounted for 164,000 cartons compared with 89,000 cartons shipped during the week ending on November 3, 1988.

Fresh domestic shipments to date this season total 1,236,000 cartons compared with 379,000 cartons shipped by this time last season. Export shipments total 122,000 cartons compared with 0 cartons shipped by this time last season. Processing and other use shipments total 286,000 cartons compared with 139,000 cartons shipped by this time last season.

The average f.o.b. shipping point price for the week ending on November 2 was \$9.53 per carton based on a reported sales volume of 548,000 cartons compared with last week's average of \$9.88 per carton on 205,000 cartons. The season average f.o.b. shipping point price to date is \$9.88 per carton. The average f.o.b. shipping point price for the week ending November 3, 1988, was \$10.96 per carton; the season average f.o.b. shipping point price this time last season was \$9.83 per carton.

The Committee reports that the market for navel oranges is stronger for most sizes although some price discounting is occurring on Choice quality fruit.

According to the National Agricultural Statistics Service, the 1988-89 season average fresh equivalent on-tree price for California-Arizona navel oranges was \$3.86 per carton, 65 percent of the season average parity equivalent price of \$5.98 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the point estimate of the 1989-90 season average fresh on-tree price would be \$4.30 per carton. This is equivalent to 66 percent of the projected season average fresh on-tree parity equivalent price of \$6.54 per carton. It is currently estimated that there is less than a one percent probability that the 1989-90 season average fresh on-tree price will exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from November 10 through November 16, 1989, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market. By using provisions contained in the navel orange marketing order, handler shipments could exceed 1,920,000 cartons during the week.

Based on considerations of supply and market conditions, and the evaluation of

alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register*. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until November 7, 1989, and this action needs to be effective for the regulatory week which begins on November 10, 1989. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers have been apprised of the provisions of this rule and the effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Oranges (navel).

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 907—[AMENDED]

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.993 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 907.993 Navel Orange Regulation 693.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from November 10 through November 16, 1989, is established as follows:

(a) District 1: 1,536,000 cartons;

- (b) District 2: unlimited cartons;
 (c) District 3: 64,000 cartons;
 (d) District 4: unlimited cartons.

Dated: November 8, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-26698 Filed 11-9-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 691]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 691 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 291,534 cartons during the period from November 12 through November 18, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 691 (7 CFR part 910) is effective for the period from November 12 through November 18, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3661.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989-90. The Committee met publicly on November 7, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and, by an 11-2 vote, recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is moderate.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.991 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.991 Lemon Regulation 691.

The quantity of lemons grown in California and Arizona which may be handled during the period from November 12, 1989, through November 18, 1989, is established at 291,534 cartons.

Dated: November 8, 1989.

Charles R. Brader

Director Fruit and Vegetable Division.

[FR Doc. 89-26697 Filed 11-9-89; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1823, 1902, 1942, and 1948

Association Loans and Grants—Community Facilities, Shift-in-Land-Use, Irrigation and Drainage, Area Assistance Development Planning Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is removing from the Code of Federal Regulations (CFR) its regulations regarding Association Loans for Shift-In-Land-Use Projects, Irrigation and Drainage and Other Soil and Water Conservation Measures, and Area Assistance Development Planning Grants. This action is necessary because these programs have not been funded for several years and the regulations are no longer used by the Agency. The intended effect of this action is to remove unnecessary regulations from the CFR. Along with obsoleting the forms that are exclusive to these regulations, the renumbering of certain forms is also being accomplished at this time.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Marlene Snell, Loan Specialist, Community Facilities Division, FmHA,

USDA, Room 6314, South Agriculture Building, Washington, DC 20250, Telephone: (202) 382-8487.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This section, however, is not published for proposed rulemaking since it involves only internal Agency management, making publication for comment unnecessary.

Environmental Impact Statement

This document has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not needed.

Programs Affected

This action affects the following FmHA programs as listed in the current Catalog of Federal Domestic Assistance: Section 10.409 Irrigation and Drainage Loans
Section 10.414 Resource Conservation and Development Loans
Section 10.419 Watershed Loans and Advances
Section 10.423 Community Facility Loans

These programs are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials (7 CFR 3015, subpart V, 48 FR 29112, June 24, 1983).

Background

Since no new funds have been appropriated for new loans or grants under these programs for several years, the Agency has removed the regulations from the CFR. All loans made under these programs, however, remain valid and will continue to be serviced under subpart E of part 1951 of this chapter. In addition although the Agency has removed subpart 1823-H, Irrigation and Drainage and Other Soil and Water Conservation Measures, several programs within FmHA remain

available for Soil and Water Conservation purposes. Finally, while certain forms are being renumbered to achieve consistency within the regulations, the content of the forms themselves have not changed.

List of Subjects

7 CFR Part 1823

Credit, Grazing lands, Loan programs—Agriculture, Rural areas, Soil conservation, Water resources.

7 CFR Part 1902

Accounting, Banks, Banking, Grant programs—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and community development.

7 CFR Part 1942

Community development, Community facilities, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

7 CFR Part 1948

Business and industry, Community development, Community facilities, Energy, Grant programs—Housing and community development, Housing, Planning, Rural Areas, Transportation.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

1. The authority citation for part 1823 continues to read as follows, and the authority citation for subpart N is removed.

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 25 U.S.C. 490; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Association Loans for Shift-in-Land-Use Projects

Subpart B—[Removed and reserved]

2. Subpart B, §§ 1823.51–1823.67, is removed and reserved.

Subpart H—Association Loans for Irrigation and Drainage and Other Soil and Water Conservation Measures

Subpart H—[Removed and reserved]

3. Subpart H, §§ 1823.221–1823.238, is removed and reserved.

Subpart I—Processing Loans to Associations (Except for Domestic Water and Waste Disposal)

Subpart I—[Removed and reserved]

4. Subpart I, §§ 1823.251–1823.289, is removed and reserved.

Subpart N—Loans to Indian Tribes and Tribal Corporations

§ 1823.415 [Amended]

5. Section 1823.415 is amended in the first sentence by changing the reference, "subpart I of part 1823" to "subpart A of part 1942."

§ 1823.416 [Amended]

6. Section 1823.416 is amended in the last sentence by changing the reference, "§§ 1823.271 and 1823.272" to "subpart A of part 1942 of this chapter."

Exhibit A to subpart N—[Amended]

7. Exhibit A to subpart N, Section 1 is amended by removing the reference, "Form FmHA 442-12: Financial Statement," by changing in section 1.(b) the reference, "Form FmHA 442-46" to read "Form FmHA 1942-46" and by changing in section 2 the reference, "Form FmHA 442-14" to read "Form FmHA 1942-14".

PART 1902—SUPERVISED BANK ACCOUNTS

8. The authority citation for part 1902 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Loan and Grant Disbursement

§ 1902.15 [Amended]

9. Section 1902.15(c) is amended in the first sentence by removing the reference, "Grazing Association, Irrigation and Drainage," and by removing the reference, "and part 1823, subpart I (FmHA Instruction 442.9)."

PART 1942—ASSOCIATIONS

10. The authority citation for part 1942 is revised to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Community Facility Loans

§§ 1942.1 and 1942.5 [Amended]

11. The reference, "Form FmHA 442-46" is changed to read "Form FmHA 1942-46" in the following sections:

§ 1942.1(d)(4)

§ 1942.5(a)(1)(ii), in the last sentence

§ 1942.5(c), introductory text, last sentence

§ 1942.5(c)(2) and (c)(3)

§ 1942.2 [Amended]

12. In § 1942.2(c)(3), the reference, "Form FmHA 442-39" is changed to read "Form FmHA 1942-39."

§ 1942.2 [Amended]

13. In § 1942.2(c)(3), the reference, "Form FmHA 442-40" is changed to read "Form FmHA 1942-40."

§ 1942.5 [Amended]

14. The reference, "Form FmHA 442-14" is changed to read "Form FmHA 1942-14" in the following paragraphs:

§ 1942.5(b)(1)(ii)(C)

§ 1942.5(c), introductory text

§ 1942.5(c)(3)

Subpart C—Fire and Rescue Loans

§ 1942.104 [Amended]

15. In § 1942.104(c)(3), the reference, "Form FmHA 442-46" is changed to read "Form FmHA 1942-46."

§ 1942.108 [Amended]

16. In § 1942.108(b), the reference, "Form FmHA 442-14" is changed to read "Form FmHA 1942-14."

Subpart I—Resource Conservation and Development

(RCD) Loans and Watershed (WS) Loans and Watershed Advances

§ 1942.412 [Amended]

17. In § 1942.412(a)(2)(ii), the reference, "Form FmHA 442-40" is changed to read "Form FmHA 1942-40" and the reference, "Form FmHA 442-39" is changed to read "Form FmHA 1942-39."

Part 1948—Rural Development

18. The authority citation for part 1948 is revised to read as follows:

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Area Development Assistance Planning Grants

Subpart A—[Removed and reserved]

19. Subpart A, §§ 1948.1–1948.47, is removed and reserved.

Dated: August 29, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-26323 Filed 11-9-89; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-101-AD; Amdt. 39-6393]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Aerospatiale Model ATR42 series airplanes, which currently prohibits use of the autopilot when operating in icing conditions. That action was prompted by an incident in which a Model ATR42 airplane operating in icing conditions (believed to have been freezing rain) experienced roll excursions and autopilot disconnect. This condition, if not corrected, could result in loss of control of the airplane. This amendment requires installation of vortex generators on the upper wing surface as a terminating action to the prohibition of use of the autopilot when operating in icing conditions.

EFFECTIVE DATE: December 15, 1989.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 216 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert C. McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-63966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 89-09-05, Amendment 39-6197 (54 FR 15730; April 19, 1989), applicable to Aerospatiale Model ATR42 series airplanes, to require installation of vortex generators on the upper wing surface as a terminating action to the prohibition of use of the autopilot when operating in icing conditions, was published in the Federal Register on July 18, 1989 (54 FR 30059).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the two comments received.

The Air Line Pilots Association (ALPA) expressed qualified support for the proposed rule, agreeing with the intent of the action, but questioning the effectiveness of the vortex generator installation in addressing the unsafe condition. The FAA does not agree with the commenter's inference that the vortex generator is ineffective. The vortex generator installation has been evaluated by the manufacturer and the FAA, and the FAA has determined that this installation does improve aileron effectiveness when operating in icing conditions including freezing rain.

The commenter also noted that the FAA has initiated other rulemaking action to prevent icing related incidents from occurring on Model ATR42 airplanes, and questioned the need for vortex generators if the Anti-icing Advisory System (AAS) installation already proposed (in a separate rulemaking action) would solve the problem. The FAA does not concur with the commenter's inference that the vortex generators are not needed. The vortex generator installation is intended to improve the aileron effectiveness when operating in icing conditions, including freezing rain. The AAS has been proposed to improve flight crew awareness of the presence of icing conditions in general, and enhance recognition of impending stall conditions. The two actions, while both intending to improve safety during flight in icing conditions, address different aspects of the unsafe condition, as discussed in the respective preambles.

ALPA asked FAA to examine the effects of ice on the horizontal stabilizer, with the belief that analysis of previous incidents would indicate that control difficulties were not limited to the roll axis, but also existed around the pitch axis. The FAA acknowledges that its review of operations in icing conditions only supports findings of an unsafe condition relative to the roll axis; no data has been provided to demonstrate that the unsafe condition addressed by this action is related to control problems in the pitch axis.

The commenter questioned whether the word "prolonged," as used in AD 89-09-05 prohibiting use of the autopilot when operating in icing conditions, could be defined; if not, the commenter suggested a prohibition of flight into freezing rain. The FAA does not concur with the commenter's suggestion. The existing AD requires the addition of a page in the Limitations Section of the Airplane Flight Manual which prohibits use of the autopilot when operating in

icing conditions and contained the statement, "Prolonged operation in freezing rain should be avoided." That AD is being revised by this AD, and the wording is removed from the Airplane Flight Manual when the vortex generators are installed. Since the wording is no longer used, further definition of the word "prolonged" is not considered necessary.

In addition, the commenter questioned the certification of the ATR42 airplane, and other airplanes, for flight in freezing rain. The commenter also expressed opinions regarding the adequacy of the anti-ice/de-ice systems and operational procedures to provide protection when operating in freezing rain on the ATR42 airplane, and questioned FAA's practices regarding operation of any airplane in freezing rain. The FAA does not consider this AD to be the proper forum for discussion of icing certification practices. These comments are of a general nature, and do not directly address the proposed rule, which requires installation of vortex generators to improve aileron effectiveness during operation in icing conditions including freezing rain. As these comments are considered to be outside the scope of the proposed rule, they will not be addressed for the purposes of this rulemaking action.

Another commenter requested revising the proposed rule to allow dispatch with up to one vortex generator missing on each wing, to an airport where repairs can be accomplished. The commenter noted that during flight tests conducted to evaluate the vortex generators, testing was conducted to show that the absence of one vortex generator (out of eight) from each wing did not substantially reduce the effectiveness of the modification. He noted that the methods used for cleaning ice from the top of the wing prior to takeoff can dislodge vortex generators. The FAA concurs with this comment, and the final rule has been revised to allow dispatch with up to one vortex generator missing on each wing. The airplane will be allowed to operate in this condition for no more than 18 hours time-in-service.

Since the issuance of the Notice, Aerospatiale has issued Revision 1 of Service Bulletin ATR42-57-0018, dated June 28, 1989. This revision differs from the Service Bulletin dated May 3, 1989, which was cited in the Notice, in that it provides clarifying information and changes the estimated number manhours required to install the vortex generators from 4 manhours to 16 manhours. The economic analysis paragraph, below, has been revised to

reflect the total manhours as 16, and the total cost impact of the AD on U.S. operators as \$27,520. The final rule has been revised to cite the latest revision of the Aerospatiale Service Bulletin as the appropriate service information for procedures relating to the installation of the vortex generators.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

It is estimated that 43 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of AD on U.S. operators is estimated to be \$27,520.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6197 (54 FR 15730; April 19, 1989), AD 89-09-05, as follows:

Aerospatiale: Applies to Model ATR42 series airplanes, certificated in any category.

Compliance is required as indicated, unless previously accomplished.

To minimize the potential hazards associated with operating in icing conditions including freezing rain, accomplish the following:

A. Within 10 hours time-in-service after May 3, 1989 (the effective date of Amendment 39-6197), incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by including a copy of this AD in the AFM. "When operating in icing conditions, as defined in the AFM, or when freezing rain is forecast or reported, use of the autopilot is prohibited."

Warning

Prolonged operation in freezing rain should be avoided. Ice accretion due to freezing rain may result in asymmetric wing lift and associated increased aileron forces necessary to maintain coordinated flight. Whenever the aircraft exhibits buffet onset, uncommanded roll, or unusual control wheel forces, immediately reduce angle-of-attack and avoid excessive maneuvering."

B. Within 60 days after the effective date of this amendment, install vortex generators, in accordance with Aerospatiale Service Bulletin ATR42-57-0018, Revision 1, dated June 28, 1989. This action constitutes terminating action for the AFM prohibition required by paragraph A., above, regarding use of the autopilot when operating in icing conditions, and the limitation may be removed from the AFM.

C. Dispatch with up to one vortex generator missing on each wing is allowable. Operation in this condition is limited to no more than 16 hours time-in-service.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 216 Route de Bayonne, 31060 Toulouse, Cedex 03,

France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment amends Amendment 39-6197, AD 89-09-05.

This amendment becomes effective December 15, 1989.

Issued in Seattle, Washington, on October 31, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-26535 Filed 11-9-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-126-AD; Amdt. 39-6394]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Aerospatiale Model ATR42 series airplanes, which requires installation of an anti-icing advisory system. This amendment is prompted by reports that flight crews have been unaware of the significance of the accretion of ice on the airplane while operating in certain icing conditions. This condition, if not corrected, could lead to loss of control of the airplane.

EFFECTIVE DATE: December 15, 1989.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 318 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Standardization Branch, ANM-113; telephone 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Aerospatiale Model ATR42 series

airplanes, which requires installation of an anti-icing advisory system, was published in the Federal Register on July 31, 1989 (54 FR 31535).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

The Air Line Pilots Association (ALPA) expressed qualified support for the proposed rule. This commenter expressed concerns with respect to the original icing certification of the Model ATR42 airplane, the adequacy of the anti/de-icing system, and the operation of the airplane in freezing rain. These comments are of a general nature, and do not directly address the proposed rule, which would require modifications intended to enhance the awareness and response of the flight crew to the presence of ice on the airplane. As these comments are considered to raise issues outside the scope of the proposed rule, they will not be addressed.

ALPA also expressed concerns regarding the effectiveness of the ice detector system. The FAA acknowledges that the ice detection system utilized by the Model ATR42 Anti-icing Advisory System (AAS) has been demonstrated to provide a reliable crew alert in the presence of ice accretion, and is proposed to improve recognition of ice accretion by the flight crew.

After review of ALPA's comments overall, the FAA infers that ALPA is requesting additional AD action to further improve the airplane while operating in icing conditions. The FAA has determined that the action required by this rule is adequate to address flight crew awareness of the significance of ice accretion and enhance recognition of impending stall conditions. However, the FAA has also proposed additional (separate) rulemaking to require the installation of vortex generators on Model ATR42 series airplanes, the installation of which is intended to improve the aileron effectiveness when operating in icing conditions, including freezing rain. These two rulemaking actions, while both intending to improve safety during flight in icing conditions, address the different aspects of the unsafe condition, as discussed in the respective preambles.

Aerospatiale, commenting for Avions de Transport Regional (ATR), which is the consortium that manufactures the Model ATR42 airplane, made several comments regarding statements in the preamble of the proposed rule. It noted that one statement, regarding incidents involving partial loss of control due to

ice accretion, could be taken out of context and be prejudicial to the ATR program. The FAA shares the concerns expressed by the commenter and acknowledges that the statement in the preamble would have been clearer if stated as follows:

There have been several incidents involving partial loss of control due to ice accretion on Aerospatiale Model ATR42 series airplanes operating in icing conditions, including freezing rain, which have been attributed to the crew being unaware of the severity or significance of ice accretion, not following Airplane Flight Manual procedures for operation when in icing conditions, and/or not recognizing the onset of a stall resulting from ice accretion.

This commenter also stated that the statement in the preamble regarding increases in minimum speeds given in the Airplane Flight Manual (AFM) for use while operating in icing conditions was incorrect. Aerospatiale noted that rather than increasing minimum speeds, ATR had actually eliminated one category of flight, namely "icing conditions without ice accretion", thereby reducing the number of flight conditions addressed in the AFM from three to two. The commenter stated that the minimum speeds with ice accretion did not change with the AFM revision addressing the anti-icing advisory system. The FAA has reviewed this material and notes that Revision 5 of the U.S. AFM stipulates minimum speeds with ice accretion are to be 1.39 times the stall speed (1.39 Vs). On the other hand, Revision 6 of the U.S. AFM provides three different minimum speeds depending on flight condition: while takeoff/2nd segment climb minimum speed is 1.32 Vs, the enroute minimum speed is 1.45 Vs and approach minimum speed is 1.5 Vs, the latter two of which are both higher than that shown in Revision 5.

The commenter also noted that, in addition to the features comprising the AAS identified in the proposed rule, ATR has added an "A.O.A." light, which notifies the crew that the stall warning angle of attack threshold has been lowered and the minimum speeds observed should be increased to the "icing speeds". The FAA concurs with this comment; however, the above comments are informational in nature. The FAA does not infer that commenter has requested any changes to the proposed rule.

Aerospatiale also suggested making Revision 6 of the U.S. AFM mandatory. The FAA concurs with this comment. Revision 6 of the AFM contains an explanation of the anti-icing advisory system and sets forth the necessary

procedures relating to it. Since this information is necessary for the flight crew to properly operate the system, the FAA intended that the AFM be revised when the system is incorporated. Accordingly, the AD has been revised to clarify this intent.

ATR Support, Inc., which provides service and maintenance support for Model ATR42 operators in the United States, commented that the current schedule for incorporating the AAS on Model ATR42 airplanes will result in some airplanes not being modified within the compliance time cited in the proposed rule, and requested a longer compliance time. The FAA does not concur that this constitutes justification for a longer compliance time. The FAA is concerned that failure to incorporate the modifications prior to the onset of the icing season for most operators does not adequately address the unsafe condition which has prompted this action. If parts are not available within the compliance time, the individual operators may petition the FAA for an extension of compliance time, or an alternate means of compliance, under the provisions of paragraph C. of the final rule.

Since the issuance of the Notice, Aerospatiale has issued Service Bulletin ATR42-30-0021, Revision 3, dated July 20, 1989, which deletes two airplanes from the applicability statement. Paragraph A. of the final rule has been revised to reflect this latest revision.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described above. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

It is estimated that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 300 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. The cost for parts is estimated to be \$45,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$2,850,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications

to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Applies to all Model ATR42 series airplanes, certificated in any category. Compliance required within 60 days after the effective date of this AD, unless previously accomplished.

To improve protection against loss of control when operating in icing conditions, including freezing rain, accomplish the following:

A. Install an anti-icing advisory system in accordance with Aerospatiale Service Bulletins ATR42-27-0021, Revision 8, dated May 2, 1989; ATR42-30-0017, Revision 3, dated January 20, 1989; ATR42-30-0018, Revision 4, dated June 14, 1989; ATR42-30-0021, Revision 3, dated July 20, 1989; ATR42-30-0024, Revision 1, dated February 13, 1989; and ATR42-30-0027, Revision 1, dated February 21, 1989.

B. Incorporate Revision 8 of the Airplane Flight Manual (AFM), dated August 1988, into the FAA-approved AFM.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or

comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 15, 1989.

Issued in Seattle, Washington, on October 31, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-26536 Filed 11-9-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ANE-44; Amdt. 39-6334]

Airworthiness Directives; Goodyear 32x8.8R16, 10PR, P/N 328Q08G2 Radial Tires

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires early removal of certain Goodyear 32x8.8R16, 10PR, P/N 328Q08G2 radial tires installed on but not limited to ATR-42 aircraft. The amendment is needed to require early removal of additional tires in order to prevent tire failure which could cause an unsafe takeoff or landing condition.

DATES: Effective Date: November 13, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletin (SB) may be obtained from Goodyear S.A., Colmar-Berg, Luxembourg, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Boston Aircraft Certification

Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7103.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-6103 (54 FR 1342; January 13, 1989), AD 89-03-01, which currently requires early removal of Goodyear 32x8.8R16, 10PR, P/N 328Q08G2 radial tires, installed on but not limited to ATR-42 aircraft. After issuing Amendment 39-6103, the FAA has determined that the tires produced subsequent to serial date 8340Gxxx, under a different process than those tires affected by the original AD, have experienced four premature failures. The tires produced under the new process have been determined to be satisfactory for 400 landings. Therefore, the FAA is amending Amendment 39-6103, by requiring all Goodyear 32x8.8R16, 10PR, P/N 328Q08G2 radial tires with serial dates greater than 8340Gxxx, that have exceeded 400 landings, be removed from service, in order to prevent tire failure which could cause an unsafe takeoff or landing condition.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this emergency regulation involves approximately 900 tires and will cost approximately \$360,000.00; and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final

regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6103 (54 FR 1342; January 13, 1989), AD 89-03-01, by adding and revising as follows:

The AD is restated in its entirety for clarity.

Goodyear: Applies to 32x8.8R16, 10PR, P/N 328Q08G2 radial tires, with serial dates 8060Gxxx and above, installed on but not limited to ATR-42 aircraft.

Compliance required as indicated, unless already accomplished.

To prevent tire failure, accomplish the following:

(a) Remove from service, all tires with serial dates between 8060Gxxx and 8320Gxxx, as follows:

(1) Tires which have accumulated 250 or more landings since new on the effective date of this AD, within the next 50 landings.

(2) Tires which have accumulated less than 250 landings since new on the effective date of this AD, at or prior to accumulating 300 landings.

(3) Tires for which no landing record has been maintained, within the next 50 landings.

(b) Remove from service, all tires with serial dates 8340Gxxx and above, as follows:

(1) Tires which have accumulated 250 or more landings since new on the effective date of this AD, within the next 150 landings.

(2) Tires which have accumulated less than 250 landings since new on the effective date of this AD, at or prior to accumulating 400 landings.

(3) Tires for which no landing record has been maintained, within the next 150 landings.

Notes: (1) Tires with serial dates 8060Gxxx and above may be used as replacements subject to the restrictions of paragraphs (a) and (b) above. Tires with serial dates prior to 8060Gxxx are approved without restrictions.

(2) Goodyear Alert Service Bulletins 32-001, dated December 5, 1988, and 32-002, Revision 1, dated July 14, 1989, apply to this AD.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective on November 13, 1989.

This amendment amends Amendment 39-6103 (54 FR 1342; January 13, 1989), AD 89-03-01.

Issued in Burlington, Massachusetts, on August 31, 1989.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.
[FR Doc. 89-26534 Filed 11-9-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 26051; Amdt. No. 1412]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESS: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT:

Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION:

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the *Federal Register* expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description

of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 1229; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria for the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference. Issued in Washington, DC on October 27, 1989.

Robert L. Goodrich,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 Gmt on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

... Effective January 11, 1990

Newnan, GA—Newnan Coweta County, NDB RWY 32, Orig.
Paducah, KY—Barkley Regional, NDB RWY 22, Amdt. 1
Greenwood, MS—Greenwood-LeFlore, VOR RWY 5, Amdt. 9
Greenwood, MS—Greenwood-LeFlore, NDB RWY 18, Amdt. 1
Greenwood, MS—Greenwood-LeFlore, ILS RWY 18, Amdt. 4
Greenwood, MS—Greenwood-LeFlore, RNAV RWY 18, Amdt. 6
Greenwood, MS—Greenwood-LeFlore, RNAV RWY 36, Amdt. 3
Morristown, TN—Moore-Murrell, SDF RWY 5, Amdt. 2
Morristown, TN—Moore-Murrell, NDB RWY 5, Amdt. 2

... Effective December 14, 1989

Orlando, FL—Orlando Executive, VOR/DME RWY 25, Orig.
Kokomo, IN—Kokomo Muni, VOR RWY 23, Amdt. 18
Kokomo, IN—Kokomo Muni, VOR RWY 32, Amdt. 18
Kokomo, IN—Kokomo Muni, ILS RWY 23, Amdt. 6
Kokomo, IN—Kokomo Muni, RNAV RWY 5, Amdt. 3
Lake Charles, LA—Chennault Industrial Airport, VOR RWY 33L, Orig.
New Orleans, LA—New Orleans Intl (Moisant Field), VOR or TACAN-A, Amdt. 11

West Point, MS—McCharen Field, VOR/
DME-B, Amdt. 4
Hannibal, MO—Hannibal Muni, NDB RWY
35, Amdt. 3
Hannibal, MO—Hannibal Muni, VOR/DME-
A, Amdt. 2
Washington, NC—Warren Field, LOC RWY
5, Orig.
Columbus, OH—Rickenbacker ANGB, VOR
RWY 23L, Amdt. 3
Columbus, OH—Rickenbacker ANGB, ILS-1,
RWY 5R, Orig.
Findlay, OH—Findlay, VOR RWY 7, Amdt.
10
Findlay, OH—Findlay, VOR RWY 25, Amdt.
3
Findlay, OH—Findlay, VOR RWY 36, Amdt.
4
Findlay, OH—Findlay, NDB RWY 31, Amdt. 9
Houston, TX—Houston Gulf, VOR RWY 31,
Amdt. 1

... Effective November 16, 1989

Fresno, CA—Fresno Air Terminal, VOR or
TACAN RWY 11L, Amdt. 11
Fresno, CA—Fresno Air Terminal, LOC BC
RWY 11L, Amdt. 8
Fresno, CA—Fresno Air Terminal, NDB RWY
29R, Amdt. 23
Fresno, CA—Fresno Air Terminal, ILS RWY
29R, Amdt. 31
Fresno, CA—Fresno-Chandler Downtown,
VOR/DME-C, Amdt. 3
Fresno, CA—Fresno-Chandler Downtown,
NDB-B, Amdt. 8
Hanford, CA—Hanford Muni, VOR-A, Amdt.
7
Madera, CA—Madera Muni, VOR RWY 30,
Amdt. 7
Merced, CA—Merced Municipal/MacReady
Field, VOR RWY 30, Amdt. 15
Merced, CA—Merced Municipal/MacReady
Field, ILS RWY 30, Amdt. 11
Visalia, CA—Visalia Muni, VOR RWY 12,
Amdt. 5
Visalia, CA—Visalia Muni, NDB RWY 30,
Amdt. 3
Visalia, CA—Visalia Muni, ILS RWY 30,
Amdt. 5
Colorado Springs, CO—City of Colorado
Springs Muni, ILS RWY 35, Amdt. 35
Detroit, MI—Detroit City, VOR RWY 33,
Amdt. 27
Detroit, MI—Detroit City, ILS RWY 33, Amdt.
13
Guthrie, OK—Guthrie Muni, NDB RWY 16,
Amdt. 3

... Effective October 24, 1989

San Jose, CA—San Jose Intl, VOR RWY 12R,
Amdt. 1
Charlotte, NC—Charlotte/Douglas Intl, ILS
RWY 5, Amdt. 35

... Effective October 20, 1989

Fort Lauderdale, FL—Fort Lauderdale/
Hollywood Intl, ILS RWY 9L, Amdt. 15
Note at end of § 97.23

The FAA published an Amendment in
Docket No. 26028, Amdt. No. 1410 to Part 97
of the Federal Aviation Regulations (VOL 54
FR No. 195 Page 41591; dated 11 Oct 89) under
Section 97.23 effective 22 SEP 89, which is
hereby amended as follows:

Kalispell, MT—Glacier Park Intl, VOR RWY
30, Amdt. 8, change amendment number to
Amdt. 9.

[FR Doc. 89-26537 Filed 11-9-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 111

Annual User Fee for Customs Broker's Permit

AGENCY: U.S. Customs Service,
Department of the Treasury.

ACTION: Notice of due date of broker's
user fee.

SUMMARY: This document advises
Customs brokers that for 1990 the
annual user fee of \$125 that is assessed
for each permit held by an individual,
partnership, association, or corporate
broker is due by January 12, 1990. This
announcement is being published to
comply with the Tax Reform Act of 1986.

DATE: Due for fee: January 12, 1990.

FOR FURTHER INFORMATION CONTACT:
Raymond R. Janiszewski, Chief, Broker
Compliance and Evaluation Branch (202)
566-5307.

SUPPLEMENTARY INFORMATION:

Background

Section 13031 of the Consolidated
Omnibus Budget Reconciliation Act of
1985 (Public Law 99-272) established
that an annual user fee of \$125 is to be
assessed for each Customs broker's
permit held by an individual,
partnership, association or corporate
broker. This fee is set forth in the
Customs Regulations in § 111.96 (19 CFR
111.96).

Section 111.96 Customs Regulations
provides that the fee is payable for each
calendar year in each district where a
broker has a permit to do business by
the due date which will be published in
the Federal Register annually.

Section 1893 of the Tax Reform Act of
1985 (Pub. L. 99-514), provides that
notice of the date on which payment is
due of the user fee for each broker
permit shall be published by the
Secretary of the Treasury in the Federal
Register by no later than 60 days before
such due date.

This document notifies brokers that
for 1990 the due date for payment of the
user fee is January 12, 1990. It is
expected that annual user fees for
brokers for subsequent years will be due
on or about the first of January each
year.

Dated: November 8, 1989.

Carol B. Hallett,

Commissioner of Customs.

[FR Doc. 89-26637 Filed 11-9-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430, 436, 440, 442, 446, and 455

[Docket No. 89N-0339]

Antibiotic Drugs; Updatings and Technical Changes

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug
Administration (FDA) is amending the
antibiotic drug regulations by updating
and making noncontroversial technical
changes in accepted standards of
antibiotic and antibiotic-containing
drugs for human use. These changes will
result in more accurate and usable
regulations.

DATES: Effective December 13, 1989;
comments, notices of participation, and
requests for hearing by December 13,
1989; data, information, and analyses to
justify a hearing by January 12, 1990.

ADDRESSES: Written comments to the
Dockets Management Branch (HFA-
305), Food and Drug Administration, Rm.
4-62, 5600 Fishers Lane, Rockville, MD
20857.

FOR FURTHER INFORMATION CONTACT:
Peter A. Dionne, Center for Drug
Evaluation and Research (HFD-520),
Food and Drug Administration, 5600
Fishers Lane, Rockville, MD 20857, 301-
443-4290.

SUPPLEMENTARY INFORMATION: FDA is
amending the antibiotic drug regulations
by updating and making
noncontroversial technical changes in
certain antibiotic drug regulations that
provide for accepted standards of
antibiotic and antibiotic-containing
drugs intended for human use.

1. In 21 CFR 430.6(b)(34), the amount
of cephalothin master standard that is
equivalent to 1 microgram of
cephalothin activity (potency) is revised
from "1.066" to "1.056" micrograms to
reflect the potency of a new lot of
cephalothin master standard.

2. In 21 CFR 436.215, the second "of"
in the footnote to the table in paragraph
(b) is corrected to read "or", and the
word "absorbance" in paragraph (c)

(10)(iii) is corrected to read "absorbance".

3. In 21 CFR 440.9a, paragraphs (a)(1)(vii) and (viii) are corrected by making the testing requirements for ampicillin content and concordance inapplicable when the high-performance liquid chromatographic (HPLC) assay procedure is used to determine the potency of sterile ampicillin sodium.

4. In 21 CFR 440.209b, the number of theoretical plates for sulbactam in paragraph (b)(1)(iii)(B) is revised from "5,000" to "3,500" and the resolution factor between the peaks for ampicillin and sulbactam alkaline degradation in paragraph (b)(1)(iii)(C) is revised from "4.0" to "1.2". These requirements were incorrectly stated in the Federal Register of November 4, 1987 (52 FR 42290).

5. In 21 CFR 442.15, the phrase "3-etheryl" in paragraph (a)(1) is corrected to read "3-ethenyl"; paragraphs (b)(1)(ii)(A) and (C) are corrected by revising the diluent used in the preparation of the working and sample solutions in the HPLC potency assay for cefixime trihydrate from "mobile phase" to "0.1 M phosphate buffer, pH 7.0"; and paragraph (b)(1)(iii)(E) is corrected by adding equal signs (=) to the first two formulas for calculating the capacity factor for cefixime.

6. In 21 CFR 446.60, the formula for calculating the capacity factor for minocycline in paragraph (b)(1)(iii)(e) is corrected, and the explanation of the term " C_m " in the formula for the calculation of the potency of the minocycline sample solution in paragraph (b)(1)(iv) is corrected.

7. In 21 CFR 446.260, paragraph (b)(1)(ii)(a) is corrected by adding the word "content" after "minocycline" in the first sentence.

8. In 21 CFR 455.82a, the number of theoretical plates for sulbactam in paragraph (b)(1)(iii)(B) is revised from "4,000" to "3,500". This requirement was incorrectly stated in the Federal Register of November 4, 1987 (52 FR 42290).

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

These amendments institute changes that are corrective, editorial, or of a minor technical nature. Because the amendments are not controversial, and because, when effective, they provide

notice of accepted standards, FDA finds that notice, public procedure, and delayed effective date are unnecessary and not in the public interest. This final rule, therefore, becomes effective December 13, 1989. However, interested persons may, on or before December 13, 1989, submit comments on this regulation to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before December 13, 1989, a written notice of participation and request for hearing, and (2) on or before January 12, 1990, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order, and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR

Part 430: Administrative practice and procedure, Antibiotics.
Part 436: Antibiotics.
Part 440: Antibiotics.
Part 442: Antibiotics.
Part 446: Antibiotics.
Part 455: Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 430, 436, 440, 442, 446, and 455 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. The authority citation for 21 CFR part 430 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 357, 371); secs. 215, 301, 351 of the Public Health Service Act (42 U.S.C. 216, 241, 262).

§ 430.6 [Amended]

2. Section 430.6 *Definitions of the terms "unit" and "microgram" as applied to antibiotic substances* is amended in paragraph (b)(34) by removing "1.066" and replacing it with "1.056".

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

3. The authority citation for 21 CFR part 436 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 436.215 [Amended]

4. Section 436.215 *Dissolution test* is amended in the footnote to the table in paragraph (b) by removing the second "of" and replacing it with "or", and in paragraph (c)(10)(iii) by removing "absorbance" and replacing it with "absorbance".

PART 440—PENICILLIN ANTIBIOTIC DRUGS

5. The authority citation for 21 CFR part 440 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

6. Section 440.9a is amended by revising paragraphs (a)(1)(vii) and (viii) to read as follows:

§ 440.9a Sterile ampicillin sodium.

(a) * * *

(1) * * *

(vii) Its ampicillin content is not less than 84.5 percent, except if the high-performance liquid chromatographic

(HPLC) assay method is used, then the ampicillin content standard is not applicable.

(viii) The potency-base titration concordance is such that the difference between the potency value divided by 10 and the percent ampicillin content of the sample determined by the nonaqueous base titration is not more than 6, except if the HPLC assay method is used, then the concordance standard is not applicable.

§ 440.209b [Amended]

7. Section 440.209b *Sterile ampicillin sodium and sulbactam sodium* is amended in paragraph (b)(1)(iii)(B) by removing "5,000" and replacing it with "3,500", and in paragraph (b)(1)(iii)(C) by removing "4.0" and replacing it with "1.2".

PART 442—CEPHA ANTIBIOTIC DRUGS

8. The authority citation for 21 CFR part 442 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

9. Section 442.15 is amended in paragraph (a)(1) by removing "3-etheryl" and replacing it with "3-ethenyl", by revising the second sentence in paragraph (b)(1)(ii)(A) and the last sentence in paragraph (b)(1)(ii)(C), and in paragraph (b)(1)(iii)(E) by adding "=" after (k) in the first formula and after t_m in the second formula to read as follows:

§ 442.15 Cefixime trihydrate.

(b) * * *

(1) * * *

(ii) * * *

(A) * * * Further dilute quantitatively to a final concentration of 0.2 milligram of cefixime activity per milliliter in 0.1 M phosphate buffer, pH 7.0. * * *

(C) * * * Immediately prior to chromatography, further dilute 10 milliliters of stock solution to 100 milliliters with 0.1 M phosphate buffer, pH 7.0 to obtain a solution containing 0.2 milligram of cefixime activity per milliliter (estimated).

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

10. The authority citation for 21 CFR part 446 continues to read as follows:

Authority: Section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

11. Section 446.60 is amended in paragraph (b)(1)(iii)(e) by revising the

first formula and in paragraph (b)(1)(iv) by revising the line beginning "C_u =" appearing under "where:" to read as follows:

§ 446.60 Minocycline hydrochloride.

(b) * * *

(1) * * *

(iii) * * *

(e) * * *

$$k' = \frac{t_r - t_0}{t_0}$$

(iv) * * *

where:

C_u = Milligrams of minocycline sample per milliliter of sample solution; and

12. Section 446.260 is amended by revising the first sentence in paragraph (b)(1)(ii)(a) to read as follows:

§ 446.260 Sterile minocycline hydrochloride.

(b) * * *

(1) * * *

(ii) * * * (a) Calculate the minocycline content of the single-dose vial as follows:

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

13. The authority citation for 21 CFR part 455 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 455.82a [Amended]

14. Section 455.82a *Sterile sulbactam sodium* is amended in paragraph (b)(1)(iii)(B) by removing "4,000" and replacing it with "3,500".

Dated: October 31, 1989.

Sammie R. Young,

Deputy Director, Office of Compliance Center for Drug Evaluation and Research.

[FR Doc. 89-26548 Filed 11-9-89; 8:45 am]

BILLING CODE 4190-01-M

21 CFR Parts 864 and 880

[Docket No. 87P-0336]

Medical Devices; Specimen Transport and Storage Container; Exemption From Most Current Good Manufacturing Practice Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is exempting the generic type of device specimen transport and storage container from most of the current good manufacturing practice (CGMP) requirements for devices. FDA has determined that compliance with all of the CGMP requirements is unnecessary to assure that this device is safe and effective. This action is being taken in response to a citizen petition.

EFFECTIVE DATE: December 13, 1989.

FOR FURTHER INFORMATION CONTACT:

Alicia B. Abbott, Center for Devices and Radiological Health (HFZ-332), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1128.

SUPPLEMENTARY INFORMATION:

On September 28, 1987, Richard-Allan Medical Industries, Richland, MI 49083, submitted to FDA a petition (87P-0336) requesting that FDA exempt the petitioner's dry (empty) and prefilled specimen transport and storage containers from the CGMP regulations in 21 CFR part 820, with the exception of §§ 820.180 and 820.198. FDA requested additional information from the petitioner, and that information was submitted on February 4, 1988.

On May 10, 1989, FDA published in the Federal Register (54 FR 20147-20148) a proposed rule. Interested persons were invited to submit comments by July 10, 1989. One comment was received. The comment agreed with the proposal to exempt specimen transport and storage containers from premarket notification and most of the CGMP regulations. The comment, however, pointed out that if 21 CFR 880.6175 were removed, specimen containers used for the collection and transportation of body waste, body exudate, or tissue samples that are not to be used for diagnostic examination, would not be covered by any regulation. The comment suggested that the identification section of 21 CFR 864.3250 be revised to include these devices.

FDA agrees with the comment. The omission was inadvertent. FDA has revised the regulation accordingly. Pursuant to § 880.6175, the devices in question were already classified in class I and exempt from premarket notification procedures and the CGMP requirements with the exception of §§ 820.180 and 820.198.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore,

neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully analyzed the economic effects of this rule and has determined that the rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this rule has been carefully analyzed, and it has been determined that the rule does not constitute a major rule as defined in section 1(b) of the Executive Order. The effect of the rule will be only to relieve an unnecessary burden on the manufacturers of the devices subject to § 864.3250.

List of Subjects

21 CFR Part 864

Blood, Medical devices, Packaging and containers.

21 CFR Part 860

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 864 and 860 are amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 864.3250 is revised to read as follows:

§ 864.3250 Specimen transport and storage container.

(a) *Identification.* A specimen transport and storage container, which may be empty or prefilled, is a device intended to contain biological specimens, body waste, or body exudate during storage and transport in order that the matter contained therein can be destroyed or used effectively for diagnostic examination. If prefilled, the device contains a fixative solution or other general purpose reagent to preserve the condition of a biological specimen added to the container.

(b) *Classification.* Class I (general controls). If the device is not intended for over-the-counter (OTC) distribution, it is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current

good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to the general requirements concerning records, and § 820.198, with respect to complaint files.

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

3. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

§ 880.6175 [Removed]

4. Section 880.6175 *Specimen container* is removed from subpart G.

Dated: October 19, 1989.

Ronald G. Chesemore,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 89-26498 Filed 11-9-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD11-89-20]

Regulated Navigation Area; San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a regulated navigation area in San Francisco Bay and implementing temporary mandatory participation in the existing Vessel Traffic Service system. This action is necessary due to the significant increase in vessel ferry traffic operating in the Bay. Increased ferry service is being used to provide alternate means of mass transportation since the normal traffic corridors in the Bay Area remain closed for repairs following structural damage resulting from the earthquake on October 17, 1989. Mandatory participation will be terminated and voluntary participation resumed as soon as the normal traffic corridors reopen and the need for increased vessel ferry service subsides.

EFFECTIVE DATE: This regulation becomes effective on 25 October, 1989 and will remain in effect until the normal traffic corridors in the Bay area are reopened. Local officials estimate that repairs to the landside bridges and highway approaches may take one to three months. This emergency will be terminated by publication of a document in the Federal Register.

ADDRESSES: Comments should be mailed to Commander (oan), Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822-5399. The comments will be available for inspection and copying at the Union Bank Building, 400 Oceangate, Room 701. Office hours are 7:00 a.m. to 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:

Mr. Mike Van Houten, Eleventh Coast Guard District Aids to Navigation and Waterways Management Branch, Long Beach, California. Telephone number (213) 499-5414.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553 a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to facilitate the safety of navigation in San Francisco Bay.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESS" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are Mr. Mike Van Houten, project officer for the Eleventh District Aids to Navigation and Waterways Management Branch, and Lieutenant Allen Lotz, project attorney for the Eleventh District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation resulted from the disruption of normal landside traffic corridors (specifically the Oakland Bay Bridge and its highway approaches) due to structural damage sustained in the earthquake that struck the Bay Area on October 17, 1989. This has resulted in a significant increase in the volume of vessel ferry traffic operating in San Francisco Bay as an alternate means of mass transportation for commuters. Many of these vessels will be using new routes which cross existing vessel traffic lanes. Mandatory participation in the Vessel Traffic Service system is

required to effectively monitor the increased commercial vessel traffic operating in the Bay, thereby facilitating the safety of navigation. This temporary regulation will be terminated as soon as the normal traffic corridors are reopened and the volume of ferry traffic decreases correspondingly. The intent of this regulation is to parallel the VTS procedures published in the "VTS San Francisco User's Manual" dated July 1984, with the one exception being that participation in the VTS will be mandatory rather than voluntary. Mariners holding this publication are encouraged to continue abiding by the procedures published therein.

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Safety measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5, 49 CFR 1.46.

2. A new § 165.T1193 is added to read as follows:

§ 165.T1193 San Francisco Bay—Regulated Navigation Area.

(a) *The following is a regulated navigation area.* The waters of San Francisco Bay from the San Francisco Approach Large Navigation Buoy in position 37-45.0 N and 122-41.5 W shoreward through the Bay and up the tributaries of the Bay as far inland as Stockton and Sacramento.

(b) *Purpose and applicability.* (1) This regulation is intended to facilitate orderly vessel traffic movement and enhance the safety of navigation during a period of increased ferry vessel service in San Francisco Bay following disruption of normal landside traffic corridors in the aftermath of the October 17 earthquake.

(2) This regulation is applicable to all commercial and public vessels, United States flag and foreign flag, transiting the area that are:

(i) 300 or more gross tons and propelled by machinery.

(ii) Carrying more than six passengers for hire while operating as a ferry or on an excursion.

(iii) 26 feet or over in length engaged in towing another vessel astern, alongside, or pushing ahead.

(iv) Likely by reason of size, special operation, intended route, cargo, or difficulty of maneuvering, to restrict or affect navigation of other vessels; or

(v) A hazard to navigation by reason of distress such as fire, collision, grounding, or mechanical, or personnel failure.

(c) *Effective dates.* This regulation becomes effective on October 25, 1989 and will be terminated as soon as the normal traffic corridors in the Bay area are reopened and the increased vessel ferry traffic subsides. Local officials estimate the repairs to landside bridges and highways may take one to three months.

(d) *Definition of terms.*

(1) *Vessel Traffic Service (VTS):* Vessel Traffic Service is a general term encompassing all elements of a system employed to manage vessel movements in a port or other congested area.

(2) *Vessel Traffic Center (VTC):* The facility operated by the Coast Guard on Yerba Buena Island, receives, evaluates, displays and disseminates verbal information concerning ship movements and other matters concerning safe navigation within the San Francisco Vessel Traffic Service Area.

(3) *Traffic Routing System (TRS):* A system of charted Traffic Separation Schemes (TSS), consisting of traffic lanes with separation lines, limited traffic areas, precautionary areas and recreation areas designed to coordinate the flow of vessel traffic into, within and out of a port or waterway.

(4) *Limited Traffic Area (LTA):* An area which should be traversed only after certain safety precautions have been observed.

(5) *Traffic Lane:* An area, specifically defined on charts by boundary lines and separation lines, intended for use by vessel traffic proceeding in approximately the same direction.

(6) *Separation Line:* A charted line separating traffic lanes for vessels proceeding in opposite or nearly opposite directions.

(7) *Boundary Line:* A charted line defining the lateral limits of traffic lanes. Special caution should be exercised when navigating near traffic lane boundary lines.

(8) *Precautionary Area:* An area at the convergence of two or more traffic separation schemes where special caution should be exercised.

(9) *Recreation Area:* An area intended primarily for use by recreational craft.

(10) *Deep-Draft Vessels:* Vessels which cannot safely adhere to the TSS because of insufficient water depths along the prescribed route.

(11) *Radar Area:* The portion of the regulated navigation area where the VTC has radar coverage and is defined as follows: The area from the San Francisco Approach Large Navigation Buoy to East Brothers Island to the North and San Mateo Bridge to the South.

(12) *Vessel Movement Reporting System Area (VMRS):* The portion of the regulated area in which there is no radar coverage. Vessel movements are tracked by radio telephone reports. This is the area North of East Brothers Island and South of the San Mateo Bridge.

(e) *Description.* The purpose of the San Francisco Vessel Traffic Service is accomplished through three basic elements: a traffic routing system, a communications network and a surveillance system. All three elements are coordinated from the Vessel Traffic Center (VTC) located on Yerba Buena Island. The VTC is manned by Coast Guard personnel trained in the collection, correlation, analysis and dissemination of vessel movement information.

(f) *Concept of operations.* (1) The normal and predominant role of the VTC is to INFORM. The VTC will inform a participant of other vessels in the vicinity, hazards to navigation, discrepancies in aids to navigation and other items of mutual concern. This will be done either at the participant's request or, when in the interest of safety, such information is considered beneficial. Operation at the INFORMATIONAL level constitutes the majority of VTC San Francisco's actions.

(2) In certain circumstances, the VTC will RECOMMEND action be taken by a participant to prevent a potentially dangerous situation. Such recommendations are designed to assist the participant in avoiding hazardous situations well before they would otherwise occur. For example, a modest change in speed now could prevent a potentially hazardous meeting situation later in a narrow channel.

(3) In an emergency, or when a dangerous situation is imminent, VTC San Francisco, acting for the Coast Guard Captain of the Port, will DIRECT the movement of participating vessels within the VTS area. Such direction will normally take place after either or both of the previous actions (INFORMATION and RECOMMENDATION) have failed to alleviate the potentially dangerous situation.

(g) *Communication Rules.* (1) San Francisco Vessel Traffic Service maintains a continuous radiotelephone watch on Channel 13 (156.65 MHz FM) and Channel 16 (156.80 MHz FM). The call sign is "San Francisco Vessel Traffic Service". After communications have been established, the abbreviated call sign "TRAFFIC" may be used. Participants should call and work "TRAFFIC" on Channel 13. Should communication on Channel 13 be lost, call "TRAFFIC" on Channel 16 and be prepared to shift to either channel 12 (156.60 MHz FM) or Channel 18A (156.90 MHz FM) for further communications with VTS. All communications with the VTC should be in the English language and use the 24 hour clock system.

(2) Nothing in these procedures contravenes or modifies the Vessel Bridge-to-Bridge Radiotelephone Regulations.

(i) Channel 13 is the frequency assigned by these regulations for operators of approaching vessels to communicate their intentions to each other.

(ii) The responsibility for complying with the Vessel Bridge-to-Bridge Radiotelephone Act, and making reports required of participants in the Vessel Traffic Service, remains with the master or person in charge of the vessel, or the person designated by the master or person in charge to pilot or direct the movement of the vessel. However, should the pilot be required to shift to another frequency the master must maintain the listening watch required on Channel 13 and make the required reports.

(iii) Since Channel 13 serves as both Bridge-to-Bridge and VTS frequency in the San Francisco VTS Area, VTS participants are not excused from the requirement, set forth in 47 CFR 83.2245, to monitor Channel 16 (156.80 MHz), the national distress, safety and calling frequency. The requirement to monitor Channel 16 does not apply to single channel stations installed in compliance with the Vessel Bridge-to-Bridge Radiotelephone Regulations.

(h) *Radar Coverage Area Rules—(1) Initial Report.* Active participants should make initial reports to the VTC upon entering the regulated navigation area from seaward or upon getting underway from within the RADAR AREA, giving the following information:

Vessel Name
Position or Location
Destination
Route (if not within the TRS)
Anticipated Pilot Change (if applicable)
Pilot Designation
Description of Tow (if applicable)

Deepest Draft (If Vessel Greater Than 300 Tons)

(2) *Additional Radar Area Reports.* (i) When passing under any bridge. (This allows reconfirmation of the identity of the radar contact. The bridges are merely convenient geographical check points.)

(ii) Upon completion of pilot change, departure of pilot or other change in person directing the movement of the vessel.

(iii) When previously reported conditions or intentions change.

(iv) When intending to deviate from the TRS.

(v) In emergency situations (after completing maneuvers necessary to protect the safety of life, property, or environment), giving all information pertinent to safety of navigation.

(vi) To report any condition (concentration of non-participants, weather, debris, vessel in distress, aid to navigation discrepancy, etc.) considered to be a hazard to navigation.

(3) *Radar Area Final Report.* Upon docking, anchoring, mooring or upon departing from the boundaries for the Radar Area the place and time should be reported to the VTC.

(4) *Loss of Radar Coverage.* In the event of loss of radar capability, the Radar Area will be declared a Vessel Movement Reporting System Area and vessels will be advised by the VTC what interim reports to make.

(i) *Vessel Movement Reporting System (VMRS) Rules.* The VMRS is in effect where there is no radar coverage in the VTS area. It is served solely by radiotelephone reports from participants. These reports are recorded and movements tracked by the VTC.

(1) *VMRS Area Initial Reports.* Participants should make initial reports to the VTC upon preparing to get underway from within the VMRS Area, giving applicable information from that prescribed for initial reports in the Radar Area.

(2) *VMRS Area Follow-up Reports.* Follow-up reports should be made:

(i) When actually underway.
(ii) When passing the following points in the northern VMRS:

POINT SAN PABLO, RIO VISTA BRIDGE, ANTIOCH BRIDGE, CARQUINEZ BRIDGE, LIGHT 51, PRISONERS POINT, S.P. RAILROAD BRIDGE, SACRAMENTO, STOCKTON, NEW YORK POINT

(iii) When entering or departing Petaluma River Entrance Channel or Mare Island Strait.

(iv) When passing the following points in the southern VMRS:

HUNTERS POINT, SAN MATEO BRIDGE

(v) When previously reported conditions or intentions change.

(vi) When intending to deviate from normally traveled routes.

(vii) In an emergency situation (after completing maneuvers necessary to protect the safety of life, property or environment), giving all information pertinent to safety of navigation.

(viii) To report any condition (concentration of non-participants, weather, debris, vessel in distress, aid to navigation discrepancy, etc.) considered to be a hazard to navigation.

(3) *VMRS Area Final Report.* (i) Upon docking, anchoring, mooring or departing the VMRS Area, the place and time should be reported to the VTC.

(ii) All reports should advise the time of the event being reported.

(4) *Read-back.* The VTC will acknowledge the receipt of reports by "reading back" the information received. The vessel can then confirm the accuracy of the information received at the VTC. If the VTC believes the report to be incomplete or in error, the vessel will be requested to repeat the report.

(j) *Traffic Routing System (TRS).* (1) A Traffic Routing System (TRS) is established in that portion of the VTS area seaward of the Golden Gate and, in the Bay, north of Hunters Point and south of Carquinez Strait. The TRS is composed of traffic lanes, precautionary areas, a limited traffic area, and recreation areas, and is shown on charts of the San Francisco area.

(2) The traffic lanes of the TRS are designed to separate the flow that a vessel traffic in such a way as to reduce the likelihood of a vessel moving in one direction will meet or cross the bow of another vessel bound in an opposite or nearly opposite direction. The lateral limits of the traffic lanes are defined by a separation line or boundary lines. Traffic proceeds within the lanes in the direction which holds the separation line on the port side of the vessel.

(3) Where traffic lanes converge or cross, precautionary areas are established. A circular area west of the Golden Gate and a circular area east of Alcatraz Island are designated precautionary areas. Potentially hazardous crossing encounters are limited by the traffic lanes to these relatively obstruction-free areas.

(4) All vessels should adhere to the TRS. The final decision to deviate from the TRS remains that of the master, pilot, or person in command. All intentions to proceed contrary to the TRS should be made known to the VTC

as far in advance as possible to permit evaluation and dissemination of necessary warnings to other participants.

(5) All vessels (including public vessels) should navigate within the vessel traffic lanes. Excepted are those vessels engaged in intra-harbor movements whose routes do not infringe on the traffic separation scheme.

(6) Vessels navigating within the traffic lanes should keep the separation line to the port side of the vessel and should maintain a course which conforms with the direction of the lane.

(7) Vessels should avoid crossing the TSS whenever possible. When it is necessary to cross a TSS, this should be done at as close to a right angle as practicable.

(8) Except when joining, leaving, crossing or navigating within a vessel traffic lane or precautionary area, vessels should stay clear of the lanes and precautionary areas by as wide a margin as practicable. Vessels choosing to operate outside of the lanes may do so, but should remain well outside.

(9) Vessels are encouraged to join and leave the traffic lanes at the precautionary areas or at the ends of the lanes. When it is necessary for a vessel to join or leave the traffic lane at some point other than the precautionary areas or a lane termination, the vessel should join or leave the traffic lane at as small an angle as practicable.

(10) Vessels within the traffic lanes who cannot comply with these traffic separation procedures because of an emergency should complete whatever maneuvers are required for safe navigation. Notify VTC of the circumstances as soon as possible.

(11) Vessels that for some reason other than an emergency, cannot comply with the traffic separation procedures should notify the VTC sufficiently in advance of each impending deviation to allow for evaluation and coordination with other vessels. This includes any vessel whose draft precludes it from following the traffic lanes. Even though similar deviations are made repeatedly, a vessel should inform VTC each and every time it proposes to deviate from the guidelines. The following are situations that may require a vessel to deviate from the TRS:

(i) Vessels inbound to ports in Oakland may desire to transit the D-E span of the Oakland Bay Bridge to facilitate safe entry into the Oakland Bar Channel. This is normally acceptable, provided there is no conflicting traffic for that span or the Limited Traffic Area south of Yerba Buena Island during the period of transit. The VTC should be notified of

such intentions well in advance. In the event of conflicting traffic, the vessel will have the option of waiting until that route is clear, or using the TRS through A-B or B-C span.

(ii) Vessels whose draft precludes adherence to the TRS are considered "deep-draft vessels." Such vessels, when bound from sea to Anchorage 9 should use the "Deep-Draft Route" east of the Golden Gate Bridge. This route is eastbound in the westbound lane, north of Harding Rock and Alcatraz Island, east of Blossom Rock, then through the C-D or D-E span of the Oakland Bay Bridge to Anchorage 9. The Pilot or Master will determine the need to use this route and should report his decision to VTS. When such a vessel enters the Bay, the VTC informs other vessels in advance. During periods of traffic congestion, a Coast Guard escort may be provided to warn other vessels that the deep-draft vessel will be proceeding contrary to the TSS.

(12) The recreational boating public is generally aware of the TRS and has legitimate expectations that ships will adhere to it. It is normally not possible for the VTC to contact recreational vessels on the VTS radio frequencies and often they do not appear on radar. Therefore, particularly in the area north and south of Alcatraz Island (where many small boats are present both day and night), the hazards of deviation from the TRS are most pronounced. For these reasons, the VTS will recommend adherence whenever a proposal to deviate from the TRS is based only on convenience. In cases of known contrary movements, the VTC may make a Marine Safety Broadcast on channels 16 and 22A to warn the boating public of the impending deviation.

(13) Ferry vessels should notify VTC of their intended route upon departure and at any time during their transit when their progress is slowed or their route is changed. The VTC should again be notified upon completion of the movement. Ferry and tour boats are expected to comply with the TRS as closely as their routes will allow.

(14) Recreation areas should be avoided by vessels other than recreational craft. They should not be used by vessels of 300 gross tons or more for through passage or for any other purpose, except in case of emergency of special circumstances.

(15) The Pinole Shoal Channel in San Pablo Bay should be considered a ONE-WAY CHANNEL whenever an explosive or hazardous-material-laden vessel or a vessel with a draft of 30 feet or greater is transiting the channel.

(16) Explosive or hazardous-material-laden vessels should comply with the

Captain of the Port guidelines for vessels with dangerous cargoes. All other vessels should proceed in such a manner as to limit meeting or passing situations with explosive or hazardous-material-laden vessels to those which are unavoidable.

(17) Any vessels that cannot enter port immediately upon arrival at the pilot station may proceed on various courses within the seaward portion of the VTS area in such a way as not to present a hazard to navigation. Alternatively they may seek safe anchorage in an area four miles due north of the charted position of the San Francisco large Navigation Buoy "SF". Ships so anchoring should inform the VTC.

(k) *Limited Traffic Area Procedures.*
(1) In San Francisco Bay there is one area which, due to its location, is considered to present high risk of collision to vessels meeting within its boundaries. For this reason it has been designated a Limited Traffic Area (LTA). This area is located immediately south of Yerba Buena Island. It extends from the boundary lines of the vessel traffic lanes eastward to encompass the Oakland Bar Channel, Inner and Outer harbor Entrance Channels and Oakland Outer harbor. Within this area vessel movement is normally restricted to one-way traffic. The VTC will monitor and assist vessels in coordinating their movements through this area.

(2) The limited Traffic Area south of Yerba Buena Island should be used by only one vessel at a time or by vessels proceeding generally in the same direction.

(3) Vessels 300 gross tons or over intending to transit this area should notify the VTC of the intended period of transit. This should be done at least 15 minutes before entering the area and prior to committing the vessel to an unchangeable action. Such vessels should not enter the Limited Traffic Area when another vessel 300 gross tons or over is in the area proceeding in the opposite direction. However, under favorable conditions, and only after clear understanding has been reached on Channel 13 between vessels as to the point and manner of passing, two vessels may agree to pass within this area. The VTC will monitor and evaluate each such arrangement.

(4) In the event no safe passing arrangements are reached or the VTC does not consider the intended arrangement to be safe, the VTC will so inform the participants, recommending alternate action. If the situation is not resolved or the VTC is not convinced a safe passage can be made, the VTC may

direct action which will resolve the problem.

(5) The VTC will advise each vessel stating an intention to transit this area whenever its intended transit conflicts with the known intent of any other vessel. Vessels should notify the VTC immediately of any change in intended transit period to prevent unnecessary delays of other vessels.

(1) Regulated Navigation Area Check-in Locations—

(i) Transit from Pilot area to locations within San Francisco Bay:

(A) Participating vessels check-in upon picking up pilot.

(B) Check-in when passing under the Golden Gate Bridge.

(C) Check-in when passing Alcatraz Island.

(ii) South Bay Transit:

(A) Check-in when passing under the Oakland Bay Bridge.

(B) Check-in when passing Oakland Inner Harbor buoys 5 and 8 (Oakland Estuary transits).

(C) Check-in when passing under San Mateo Bridge (South Bay transits).

(D) Check-in when mooring.

(iii) Port of Sacramento/Stockton:

(A) Check-in when passing under the Richmond-San Rafael Bridge.

(B) Check-in when entering Pinole Shoals Channel (East Brothers area).

(C) Check-in when passing under the Carquinez Straits Bridge.

(D) Check-in when passing under the Southern Pacific Railroad Bridge.

(E) Check-in when passing New York Point.

(iv) Sacramento:

(A) Check-in when passing under the Rio Vista Bridge.

(B) Check-in when passing River marker 56 in the Sacramento Deep Water Ship Channel.

(C) Check-in when mooring at the Port of Sacramento.

(V) Stockton:

(A) Check-in when passing Antioch Point.

(B) Check-in when passing Prisoners Point.

(C) Check-in when mooring at the Port of Stockton. When proceeding outbound the same check-in locations apply.

Dated: October 25, 1989.

J.W. Kime,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 89-26546 Filed 11-9-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3679-5; KY-062]

Approval and Promulgation of Implementation Plans KY: Approval of Revisions to Appendix N

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a revision to Appendix N of the Kentucky State Implementation Plan (SIP). Appendix N consists of regulations developed by the Air Pollution Control District of Jefferson County (the District), and applies only in Jefferson County, Kentucky; they are implemented by the District. EPA approval of the regulations enables the District to retain authority for all subject activities in Jefferson County.

EFFECTIVE DATE: This action will be effective January 12, 1990, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to Richard A. Schutt of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the material submitted by Kentucky may be examined during normal business hours at the following location:

Public Information Reference Unit,
Library Systems Branch,
Environmental Protection Agency, 401
M Street, SW., Washington, DC 20460
Region IV Air Programs Branch,
Environmental Protection Agency, 345
Courtland Street, Atlanta, Georgia
30365

Kentucky Department for Environmental
Protection, Frankfort Office Park, 18
Reilly Road, Frankfort, Kentucky
40601

Air Pollution Control, District of
Jefferson County, 914 East Broadway,
Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Richard A. Schutt of the EPA Region IV Air Programs Branch at 404-347-2864 (FTS-257-2864) and at the above address.

SUPPLEMENTARY INFORMATION: The Air Pollution Control District of Jefferson County (the district) develops and implements air quality regulations in Jefferson County, Kentucky. The District's regulations are at least as stringent as corresponding Kentucky

regulations. The District's regulations are incorporated by the State as part of the Kentucky SIP; in this manner, the State has the authority to implement the regulations in Jefferson County if the District cannot.

The SIP revision affected by today's approval was adopted by the Air Pollution Control Board of Jefferson County on April 19, 1989, and submitted to EPA by Kentucky on August 2, 1989. The regulation being approved by this notice is 2.05 Prevention of Significant Deterioration of Air Quality. On September 1, 1989, at 54 FR 36307, EPA approved Kentucky's regulation 51:017 Prevention of Significant Deterioration of Air Quality. In the August 2, 1989, submittal letter, the secretary of the Kentucky Natural Resources and Environmental Protection Cabinet stated that "Regulation 2.05 has been reviewed by the Cabinet and has been found to be not less stringent than the corresponding state regulation" (that has recently been federally approved).

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective January 12, 1990 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective January 12, 1990.

Final Action: EPA is today finalizing approval of the addition of Regulation 2.05 contained in Appendix N of the Kentucky State Implementation Plan.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 12, 1990. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations.

Note: Incorporation by reference of Kentucky State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 30, 1989.

Joe R. Franzmathes,

Acting Regional Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart S—Kentucky

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.920 is amended by adding paragraph (c)(65) to read as follows:

§ 52.920 Identification of plan.

(c) * * *

(65) Addition of Jefferson County Regulation 2.05, Prevention of Significant Deterioration of Air Quality, submitted on August 2, 1989, by the Kentucky Natural Resources and Environmental Protection Cabinet.

(i) Incorporation by reference.

(A) Jefferson County Regulation 2.05, Prevention of Significant Deterioration of Air Quality. This regulation became effective April 19, 1989.

(ii) Other material.

(A) August 2, 1989, letter from the Natural Resources and Environmental Protection Cabinet.

[FR Doc. 89-26585 Filed 11-9-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[MS-013 FRL-3679-6]

Approval and Promulgation of Implementation Plans; Mississippi: PM₁₀ SIP Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On July 26, 1988, the State of Mississippi submitted revisions to its State Implementation Plan (SIP) for particulate matter. The revisions became State-effective on June 4, 1988. The revisions were adopted pursuant to the requirements of Section 110 of the Clean Air Act to provide for the attainment of EPA's new particulate matter standards, known as "PM₁₀" standards. EPA proposed approval of these revisions on March 2, 1989 (54 FR 8764), and no comments were received.

DATE: This rule will become effective on December 13, 1989.

ADDRESSES: Copies of the State's submittal are available for review during normal business hours at the following locations:

Public Information Reference Unit,
Library Systems Branch,
Environmental Protection Agency, 401
M Street SW., Washington, DC 20460
Environmental Protection Agency,
Region IV, Air Programs Branch, 345
Courtland Street NE., Atlanta, Georgia
30365

Mississippi Department of Natural
Resources, Bureau of Pollution
Control, 2380 Highway 80 West,
Jackson, Mississippi 39205

FOR FURTHER INFORMATION CONTACT:

Ms. Rosalyn D. Hughes, Air Programs
Branch, EPA Region IV, at the above
address and telephone number (404)
347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: Pursuant to the 1977 amendments to the Clean Air Act, EPA, on July 1, 1987 (52 FR 24634), promulgated revised primary and secondary National Ambient Air Quality Standards (NAAQS) for particulate matter by replacing the total suspended particulate matter standard with a standard that included only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. The particles are referred to as PM₁₀.

The PM₁₀ standards cover a size range of particles that is different than the range of particles covered by the former particulate standard for total suspended particulates (TSP). This means that States must develop and implement PM₁₀ control programs. The process being used generally follows the basic approach used in the development and implementation of TSP control programs. First, EPA evaluated the probabilities of PM₁₀ air quality levels predicted from actual TSP data and concluded that Mississippi was a Group III area, which means that the existing particulate matter control strategy is believed to be largely adequate to attain

and maintain the PM₁₀ standards. However, the Mississippi SIP still needed to be revised to address the PM₁₀ NAAQS in the following ways:

(a) To include State ambient air quality standards for PM₁₀ at least as stringent as the NAAQS.

(b) To trigger preconstruction review for new or modified sources which would emit significant amounts of either PM or PM₁₀ emissions.

(c) To invoke the emergency episode plan to prevent PM₁₀ concentrations from reaching the significant harm level of 600 µg/m³.

(d) To meet ambient PM₁₀ monitoring requirements of 40 CFR part 58, and

(e) To meet the requirements of 40 CFR 51.322 and 51.323 to report actual annual emissions of PM₁₀ (beginning with emissions for 1988) for point sources emitting 100 tons per year or more.

Mississippi revised its SIP to address the PM₁₀ NAAQS and EPA proposed approval of these revisions on March 2, 1989 (54 FR 8764). No comments were received. The definitions for "Total suspended particulate," "Particulate matter," "Particulate matter emissions," "PM₁₀," and "PM₁₀ emissions" are being added or modified to read the same as the federal definitions. The other existing definitions in the SIP are being recodified.

In the new source review permit regulations, the definition of "Offset policy" was modified to identify the version of the federal regulations adopted. Also, definitions for "Significance levels" and "Significant impact" were added. The Redesignated Offset Policy was restructured so that the applicability requirement was recodified with two criteria and a new section was added defining prohibitions, more stringent than the federal conditions, on receiving a construction permit.

In the Emergency Episode Regulations several revisions were made. In the Episode Criteria Section, the paragraphs for Alert, Warning and Emergency were revised to add the criterion for PM₁₀, to delete the criteria for particulates and for particulates and SO₂ combined and to add wording which matches the federal definition regarding continuation or recurrence of high pollutant concentration. The State took this opportunity to make additional changes unrelated to PM₁₀. The paragraph about air pollution forecasts was modified to contain the proper name of the air pollution agency; "oxidants" was changed to "ozone" in the Alert, Warning and Emergency paragraphs; and the ozone concentration criteria in

the Emergency paragraph were modified to match the federal definition.

In the Emergency Orders Section, "Suspended particulate matter" was deleted from the Air Pollution Alert and Air Pollution Warning paragraphs and replaced with "PM₁₀."

Mississippi also submitted an updated Air Quality Surveillance Plan which included the ambient PM₁₀ monitoring requirements of 40 CFR Part 58 and the reporting requirements of 40 CFR 51.322 and 51.323. The Air Quality Surveillance Plan is part of the narrative portion of the Mississippi SIP, chapter 9.0, Air Monitoring. Other revisions to the narrative portion of the SIP that reflect the addition of PM₁₀ include the following sections:

- 1.15 Notification of Public Hearing for Plan Revision for PM₁₀ Requirements
- 3.6 Legal Authority for the PM₁₀ Plan Revision
- 5.5 Control Strategy for the Development of Emission Regulations for PM₁₀
- 6.9 Control Regulations for PM₁₀ Revisions
- 14.1.4 Health Effects of the PM₁₀ Plan Revisions
- 14.3.4 Economic Effects of the PM₁₀ Plan Revisions
- 14.5.4 Social Effects of the PM₁₀ Plan Revisions
- 14.6.4 Air Quality Effects of the PM₁₀ Revisions

The Prevention of Significant Deterioration (PSD) program in Mississippi is delegated by EPA. The delegation was updated to reflect the addition of PM₁₀ on May 20, 1988. Regulation APC-S-1, Section 6.2, paragraph 2 was revised to indicate the delegation update. The Ambient Air Quality Standards (AAQS), Regulation APC-S-4, were revised to incorporate PM₁₀. The PSD delegation and the AAQS are not part of the federally approved SIP but were submitted as attachments to the SIP.

Final Action: EPA has reviewed the submitted material and found it to meet the requirements of 40 CFR Part 51. Therefore, EPA is today approving Mississippi's revisions for PM₁₀.

For further information on EPA's analysis, the reader may consult a Technical Support Document which contains a detailed review of the materials submitted. This is available at the EPA address given above.

Under Section 307(b)(1) of the Act, petition for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [60 days from date of publication]. This action may not be challenged later in proceedings to enforce its requirements (see Section 307(b)(2)).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 8, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Air Pollution control, Hydrocarbons, Incorporation by reference, Ozone, Particulate matter, Reporting and Recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Mississippi was approved by the Director of the Federal Register on July 1, 1982.

Dated June 26, 1989.

Joe R. Franzmathes,
Acting Regional Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart Z—Mississippi

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1270 is amended by adding paragraph (c)(20) to read as follows:

§ 52.1270 Identification of plan.

• • • • •

(c) • • •

(20) PM₁₀ revisions for the State of Mississippi which were submitted by the Mississippi Department of Natural Resources on July 26, 1988.

(i) Incorporation by reference.

(A) Revised regulations which became State-effective on June 3, 1988:

1. Air Emission Regulations, APC-S-1, Section 2, (16)-(27).

2. Permit Regulations . . . , APC-S-2, 2.4.8.1(a), (b), (e), (f) and 2.4.8.3.

3. Regulations for the Prevention of Air Pollution Emergency Episodes, APC-S-3, Section 3 and Section 5.

(ii) Additional material.

(A) Letter of July 26, 1988, from the Mississippi Department of Natural Resources, submitting the Mississippi SIP revisions.

Revised SIP narrative:

(B) Section 1.15 Notification of Public Hearing for Plan Revision for PM₁₀ Requirements

(C) Section 3.6 Legal Authority for the PM₁₀ Plan Revision

(D) Section 5.5 Control Strategy for the Development of Emission Regulations for PM₁₀

(E) Section 6.9 Control Regulations for PM₁₀ Revisions

(F) Chapter 9.0 Air Monitoring

(G) Section 14.1.4 Health Effects of the PM₁₀ Plan Revisions

(H) Section 14.3.4 Economic Effects of the PM₁₀ Plan Revisions

(I) Section 14.5.4 Social Effects of the PM₁₀ Plan Revisions

(J) Section 14.6.4 Air Quality Effects of the PM₁₀ Revisions

[FR Doc. 89-26586 Filed 11-9-89; 8:45 am]

BILLING CODE 6560-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of modification of fishery closure; request for comments.

SUMMARY: NOAA announces a modification of a closure to bottom trawling for groundfish in the Gulf of Alaska, by allowing additional bottom trawling for flounder by vessels that participate in a special observer program, until an additional Pacific halibut (halibut) mortality in the flounder fishery reaches 80,000 pounds (36 metric tons (mt)). This action is necessary to provide additional fishing opportunity to harvest the available total allowable catch (TAC) for flounder while minimizing the catch of halibut. It is intended to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

EFFECTIVE DATE: This notice is effective November 12, 1989. Comments are invited until November 22, 1989.

ADDRESS: Comments on this action may be sent to, and copies of the special observer program may be requested from, Steven Pennoyer, Regional Director, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The FMP was developed under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations appearing at 50 CFR 611.92 and part 672. Under

§ 672.20(f)(1) of the regulations, trawling with gear other than pelagic trawls was prohibited on September 2, 1989 (54 FR 37110, September 7, 1989), when projected mortality of halibut inflicted by groundfish fishing operations reached the specified prohibited species catch (PSC) limit of 2,000 mt established at 54 FR 6524 (February 13, 1989). Reasons for that closure are contained in the Federal Register notice and include a projection that bottom trawling results in an average 4.5 percent halibut bycatch rate and a subsequent mortality rate of 50 percent of halibut that are caught. The North Pacific Fishery Management Council (Council) reviewed this closure at its September 26-29, 1989 meeting with respect to its overall objectives pertaining to groundfish fishing while protecting halibut, which are important to other U.S. fishermen.

The Council received public testimony from representatives of fishermen who participated in the flounder fishery. This testimony made reference to groundfish catch and halibut bycatch data gathered by fishery observers and reported by the Alaska Department of Fish and Game (ADF&G). Some of these data showed that fishing for deepwater species of flounder (i.e., rex sole and dover sole) resulted in halibut bycatch rates that were less than the 4.5 percent rate used to project the fishery closure. The Council then voted to recommend that further bottom trawling be allowed to continue for flounder by operators who had demonstrated a substantially lower halibut bycatch rate than the projected rate until the additional halibut mortality reached 40,000 pounds.

The Secretary of Commerce (Secretary) has reviewed the Council's recommendation and regulations implementing the FMP that govern the halibut PSC. Under the regulations, the Director, Alaska Region, NMFS (Regional Director) is authorized to allow some or all vessels to which a PSC limit applies to continue to fish for groundfish under specified conditions after issuing relevant findings about the following considerations:

(A) The risk of biological harm to halibut stocks and of socioeconomic harm to authorized halibut users posed by continued bottom trawling by these vessels;

(B) The extent to which these vessels have avoided incidental halibut catches up to that point in the year;

(C) The confidence of the Regional Director in the accuracy of the estimates of incidental halibut catches by these vessels up to that point in the year;

(D) Whether observer coverage of these vessels is sufficient to assure adherence to the prescribed conditions

and to alert the Regional Director to increases in their incidental halibut catches; and

(E) The enforcement record of owners and operators of these vessels, and the confidence of the Regional Director that adherence to the prescribed conditions can be assured in light of available enforcement resources.

After having reviewed the above considerations, the Regional Director has determined that further fishing for flounder with bottom trawls is warranted and hereby makes the following findings:

(A) An additional 36 mt of halibut mortality will not pose a significant risk of biological harm to halibut stocks or socioeconomic harm to authorized halibut users, because halibut stocks are healthy and 36 mt (80,000 pounds) represents only 0.16 percent of the 1989 halibut quota of 49 million pounds available for commercial harvest in the Gulf of Alaska;

(B) Available ADF&G observer information shows halibut bycatch rates by vessels making flounder landings through September 2, 1989, were less than the average 4.5 percent projected for the trawl fishery. Therefore, based on this information, the Regional Director believes that these rates reflect the ability of vessels targeting on flounders to reduce halibut bycatches;

(C) Because observer coverage of vessels participating in the flounder fishery was acceptable with respect to statistical sampling design, the Regional Director is confident in the accuracy of reported halibut bycatch rates;

(D) Operators of vessels that participate in additional flounder fishing must comply with an observer program prepared by the Regional Director. Therefore, the Regional Director is confident that observer coverage of these vessels will be sufficient to assure adherence to the prescribed conditions while bottom trawling in the Gulf of Alaska and to alert him to increases in incidental halibut catches; and

(E) Enforcement resources are sufficient to assure adherence to the prescribed conditions.

On the basis of the Regional Director's findings, the Secretary modifies the previously issued closure notice by reopening the Gulf of Alaska to bottom trawling for flounder by operators of vessels that agree to comply with specified conditions stated in an observer plan as requested by the Regional Director under 50 CFR 672.27 and available from him upon request at the above address. In making this decision, the Secretary recognizes that all vessel operators wishing to fish for

flounder, not just those that had fished earlier and could demonstrate a low halibut bycatch rate, will be given the opportunity to participate, and that the increase in PSC limit is more than that recommended by the Council. The Secretary did not define during the course of the 1989 fishery what a low halibut bycatch was or what levels of observer coverage would be considered adequate to substantiate a bycatch rate. For reasons of fairness, the Secretary is allowing further flounder fishing by all fishermen, subject to the observer plan. The Secretary also notes that the amount of halibut (18 mt) recommended by the Council was based only on testimony from a single processor about what might be needed to support flounder catches by that processor. Since more than one processor is expected to participate in the fishery, the Secretary believes 18 mt of halibut would likely not be adequate, based on the best available information. Rather than open a fishery without adequate provision for halibut bycatch, the Secretary has determined that the larger PSC amount of 36 mt is more reasonable.

The observer plan requires each operator of any vessel that participates in the flounder fishery to comply with the following standards.

(1) Each vessel must carry an observer for purposes of observing halibut bycatch rates while bottom trawling.

(2) The accounting period for purposes of measuring halibut bycatch rates during this fishery shall be weekly from midnight (Alaska Standard Time), Sunday morning until midnight (Alaska Standard Time), the following Saturday night.

(3) The operator of any vessel must cease bottom trawling in the Gulf of Alaska for the remainder of the fishing year if:

(a) The observed average halibut bycatch rate for a vessel reaches 4.5 percent of the total amount of fish retained on board and fish products, calculated in round weight equivalents, that are retained on board at the end of the first accounting period in which that vessel participates, or;

(b) The observed average halibut bycatch rate for a vessel reaches 3.0 percent of the total amount of fish retained on board and fish products, calculated in round weight equivalents, that are retained on board at the end of any subsequent accounting period, or;

(c) If the aggregated halibut bycatch by all vessels participating in the bottom trawl flounder fishery reaches 36 metric tons of halibut mortality.

(4) While bottom trawling, vessels may not catch and retain other groundfish species in amounts that are 20 percent or more of the amount of fish and fish products retained on board a vessel, calculated in round weight equivalents. This restriction is intended to provide additional fishing opportunity to harvest flounder, while minimizing the harvest of other groundfish species for which the halibut bycatch rates are higher.

If a vessel operator fails to comply with any standard contained in the observer plan, that vessel's participation under the observer plan will be considered terminated.

Classification

This action is taken under §§ 672.20(f) and 672.27 and is in compliance with Executive Order 12291. The Secretary finds for good cause that it is impracticable and contrary to the public interest to provide prior notice and opportunity to comment on this action or to delay for 30 days its effective date under sections 553 (b) and (d) of the Administrative Procedure Act (APA). Bottom trawling for flounder must commence immediately under this notice in order to provide adequate fishing opportunity to harvest available flounder during the remainder of the fishing year. The Secretary also finds that this action relieves a restriction

under section 553(d) of the APA by removing the prohibition on fishing with gear other than pelagic gear in the Gulf of Alaska. The Secretary invites comments until November 22, 1989. These comments will be considered in administering this notice, and in determining whether to modify or rescind it.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 7, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-26577 Filed 11-7-89; 1:41 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 54, No. 217

Monday, November 13, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1135

(DA-90-001)

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Prepared suspension of rule.

SUMMARY: This notice invites written comments on a proposal to continue a suspension of portions of the Southwestern Idaho-Eastern Oregon Federal milk order. The provisions proposed to be suspended relate to limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. This action was requested by the Dairymen's Creamery Association, Inc. (DCA), an association of producers that supplies much of the market's fluid needs and handles reserve milk supplies. DCA has requested continuation of the suspension to prevent uneconomic movements of milk. The proposed suspension would begin in December 1989 and continue for an indefinite period. The same order provisions have been suspended since December 1988.

DATE: Comments are due on or before November 20, 1989.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area is being considered for an indefinite period beginning December 1989:

In § 1135.13, paragraphs (f) (3), (4), (5), and (6).

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the Federal Register. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures to make the action effective beginning with December 1989.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The Dairymen's Creamery Association, Inc. (DCA), an association of producers that supplies much of the market's fluid milk needs and handles much of the market's reserve milk supplies, has requested an indefinite suspension. The requested action would continue the suspension of provisions

that limit the amount of producer milk that a cooperative association or other handler may divert from pool plants to nonpool plants. These provisions have been suspended since December 1988 through two previous suspension actions.

The order provides that a cooperative association may divert up to 80 percent of its total member milk received at all pool plants or diverted from pool plants during any month. Also, a proprietary bulk tank handler may divert up to 80 percent of the producer milk it delivers to, or diverts from, pool plants during any month. Finally, the operator of a pool plant may divert up to 80 percent of its receipts of producer milk (for which the pool plant operator is the handler during the month) during any month. DCA indicates that the reasons for an indefinite suspension relate to the persisting conditions that led to the two prior six-month suspensions of the same order provisions. These include the costs of unloading and re-loading of about 2,000,000 pounds of milk through a supply plant each month to meet diversion requirements, which results in increased exposure of the milk to contamination and in shrinkage of milk weights. In addition, continuing uncertainties regarding production trends, economic conditions, and milk utilization percentages make it difficult to establish a diversion percentage that would allow an effective allocation of the milk supply.

DCA indicates that milk production in the southeastern portion of the marketing area continues to increase in terms of the number of dairy farms and the size of dairies. With present and anticipated increases in milk prices to dairymen, DCA believes future production in the region will likely increase over this year. According to DCA, even though sales of Class I products have increased about 6 percent in 1989, production is still projected to surpass Class I needs for the market.

Finally, DCA believes that an indefinite suspension of the diversion requirements will meet the needs of the order and not cause disruption to producers who have historically supplied the needs of the Southwestern Idaho-Eastern Oregon marketing area. DCA also stated that when conditions are more settled, they would be in a position to propose an amendment to the order.

List of Subjects in 7 CFR part 1135

Dairy products, Milk, Milk marketing orders.

The authority citation for 7 CFR part 1135 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on: November 6, 1989.

Daniel Haley,
Administrator.

[FR Doc. 89-26514 Filed 11-9-89; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration**7 CFR Part 1948****Intermediary Relending Program; Correction**

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule; Correction.

SUMMARY: The Farmers Home Administration corrects a proposed rule published October 11, 1989 (54 FR 41626). In the subject proposed rule errors were made which could affect the interpretation of the proposal and therefore could possibly affect the public comment process. This action is taken to correct those errors. The intended effect is to make the proposed rule read as intended.

DATES: Comments on the proposed rule must be received on or before November 13, 1989.

ADDRESSES: Submit written comments in duplicate to the Chief, Directives and Forms Management Branch, Farmers Home Administration, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Business and Industry Loan Specialist, Farmers Home Administration, USDA, Room 6327, South Agriculture Building, 14th and Independence Avenue, SW, Washington, DC 20250, Telephone (202) 475-3819.

SUPPLEMENTARY INFORMATION: The following is a list of the errors being corrected by this document:

1. In § 1948.123(c)(1)(i), regarding priority for obtaining other funds, the word "loan" was inadvertently omitted. This may cause a reader to incorrectly interpret the sources of other funds that

would result in the award of priority points.

2. In § 1948.123(c)(2)(iii), the words "that the ultimate recipient" were inadvertently omitted. This could cause a reader to incorrectly interpret that the intermediary would be required to make a certification that is intended to be required from the ultimate recipient.

Accordingly, the Farmers Home Administration is correcting its proposed revisions to title 7, chapter XVIII, part 1948, of the Code of Federal Regulations, as published on October 11, 1989 (54 FR 41626), as follows:

PART 1948—RURAL DEVELOPMENT**Subpart C—Intermediary Relending Program (IRP)**

On page 41626, section 1948.123, paragraphs (c)(1)(i) introductory text and (c)(2)(iii) introductory text, are correctly revised to read as follows:

§ 1948.123 Filing and processing applications for loans.

(c) * * *

(1) * * *

(i) The intermediary will obtain non-Federal loan or grant funds to pay part of the cost of the ultimate recipients' projects. The amount of funds from other sources will average:

(2) * * *

(iii) The intermediary will require as a condition of eligibility for a loan to an ultimate recipient that the ultimate recipient certify in writing that it will employ the following percentage of its workforce from members of families with income below the poverty line:

Dated: November 6, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-26561 Filed 11-9-89; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 89-CE-30-AD]

Airworthiness Directives; Cessna 208 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Cessna 208 series airplanes, which would require inspection of the engine mount ring lower attachment points and replacement of the nose landing gear shimmy dampener. This proposal is prompted by several reports of failure of the shimmy dampener which have led to severe shimmy of the nose wheel. The proposed actions will lower the possibility of nose landing gear shimmy, detect cracks in the engine mount ring, and preclude separation of the engine from the airplane.

DATES: Comments must be received on or before December 13, 1989.

ADDRESSES: Cessna Caravan Service Bulletin CAB88-14, dated April 8, 1988, applicable to this AD, may be obtained from the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-30-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Douglas W. Haig, Wichita Aircraft Certification Office, Mid-Continent Airport, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the

substance of this proposal, will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-30-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received a report that a Cessna Model 208 airplane experienced severe shimmy of the nose wheel assembly during landing. Upon examination, it was determined that failure of the nose landing gear shimmy dampener allowed the gear to vibrate, which in turn induced cracks in the lower corners of the engine mount ring. The FAA is also aware of several similar occurrences of cracked engine mount rings being found after nose gear shimmy encounters. The service records of the Cessna Aircraft Company indicate 17 additional reports of cracks in the lower portion of the engine mount ring. If these cracks are allowed to develop through the mount ring, the reduced stiffness of the engine support system may result in a whirl mode flutter instability of the propeller-powerplant system. Additionally, complete failure of the engine mount could result in separation of the engine from the airplane.

Cessna has incorporated a different shimmy dampener on more recently manufactured 208 series airplanes. This new design utilizes two servicing ports to assist in fluid filling and air expulsion during servicing operations. Cessna has issued Cessna Service Bulletin CAB88-14, dated April 8, 1988, specifying the new and improved shimmy dampener, Part No. 2643090-1, for affected Model 208, 208A, and 208B airplanes. This new shimmy dampener will lower the possibility of nose landing gear shimmy and minimize the potential for structural damage to the engine mount ring. Since the condition described is likely to exist or develop in other Cessna 208 series airplanes of the same design, the proposed AD would require replacement of the shimmy dampener in accordance with Service Bulletin CAB88-14, and an inspection of the engine mount ring for cracks on Cessna 208 series airplanes.

The FAA has determined there are approximately 212 Cessna 208 series airplanes affected by the proposed AD. The cost of replacing the shimmy dampener and inspecting the engine mount ring in accordance with the proposed AD is estimated to be \$1,421 per airplane. The total cost is estimated

to be \$301,252. The FAA has determined that all but 35 of these affected airplanes have already complied with the referenced service instructions. Therefore, the proposed actions will not have a significant financial impact on any entities operating these airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows.

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Cessna: Applies to Models 208 and 208A (Serial Numbers 20800001 through 20800130), and Model 208B (Serial Numbers 208B0001 through 208B0086) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished. To prevent nose landing gear shimmy and failure of the engine mount ring, accomplish the following:

(a) Visually inspect the lower portion of the engine mount ring for misalignment and cracks.

(1) If any ring has a visible misalignment, or has a crack longer than 1.7 inches, prior to further flight replace the ring with a serviceable part.

(2) If any ring has a crack less than 1.7 inches, prior to further flight repair the ring in accordance with the Cessna Model 208 Maintenance Manual, P/N 02076-2-13.

(b) Replace the shimmy dampener (Part Number 2643007-1 or -2) with a Part Number 2643090-1 shimmy dampener in accordance with the instructions in Cessna Caravan Service Bulletin CAB88-14, dated April 8, 1988.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) Alternate method of compliance or adjustment of the compliance time which provides an equivalent level of safety, may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4400.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

All persons affected by this directive may obtain copies of the document referred to herein upon request to the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 31, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-26533 Filed 11-9-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-ASW-40]

Airworthiness Directive; Sikorsky Model S-58T Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection of the engine combining gear box/angle gear box drive shaft assembly for cracks and loose balance weights on S-58T series helicopters. The proposed AD is needed to prevent failure of the engine combining gear box/angle gearbox drive shaft assembly which could result in loss of the helicopter.

DATE: Comments must be received on or before December 28, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, Fort Worth, Texas 76193-0007, or delivered in duplicate to Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Building 3B, Room 158, Fort Worth, Texas. Comments delivered must be marked: Docket No. 89-ASW-40.

Comments may be inspected at the above location in Room 158 of Building 3B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service bulletin (SB) may be obtained from Mr. R.E. Warren, Sikorsky Aircraft Division, United Technologies Corporation, North Main Street, Stratford, Connecticut 06601, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before any final action is taken on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Regional Rules Docket, FAA, 4400 Blue Mound Road, Building 3B, Room 158, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89-ASW-40. The postcard will be

date/time stamped and returned to the commenter.

There have been two reported incidents of loose balance weights on the engine combining gear box/angle gear box drive shaft on S-58T series helicopters. One of the incidents resulted in a fatigue crack of the drive shaft. Since this condition is likely to exist or develop on other helicopters of the same design, the proposed AD would require inspection, and removal if necessary, of the engine combining gear box/angle gear box drive shaft assembly on these helicopters.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves only 41 helicopters and the approximate cost would be \$240 per helicopter if an inspection only is required, plus an additional \$4,000, if replacement of the drive shaft is required. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 39:

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

PART 39—AIRWORTHINESS DIRECTIVES

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA proposes to amend § 39.13 of part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Sikorsky Aircraft: Applies to Model S-58T series helicopters, certificated in any category. (Docket No. 89-ASW-40)

Compliance is required as indicated, unless already accomplished.

To prevent possible failure of the engine combining gearbox/angle gear box drive shaft assembly, part number (P/N) 58350-10030-045, which could result in loss of the helicopter, accomplish the following:

Within the next 50 hours' time in service after the effective date of this AD, inspect the engine combining gear box/angle gear box drive shaft assembly for cracks and loose balance weights as follows:

(a) Remove the engine combining gear box/angle gear box drive shaft assembly from the helicopter.

(b) Check the engine combining gear box/angle gear box drive shaft assembly for loose balance weights and a gap at the riveted joint between the balance weight and shaft as follows:

(1) Using a feeler gage, check for a gap greater than 0.002 inch in the immediate area of the attaching rivets which secure the balance weights to the shaft.

Note.—On balance weights which require two rivets, do not check at the mid-span.

(2) If a gap greater than 0.002 inch exists in the immediate area of the riveted joint, remove the engine combining gear box/angle gear box drive shaft assembly from service and reinstall an airworthy part in accordance with the standard maintenance instructions.

(3) If the gap at the rivets is 0.002 inch or less, further inspect the engine combining gear box/angle gear box drive shaft assembly as follows:

(i) Mask off an area on the engine combining gear box/angle gear box drive shaft assembly about 0.5 inch from all sides of the balance weights.

(ii) Remove the protective finish, paint, and primer from the engine combining gear box/angle gear box drive shaft assembly using paint remover, MIL-R-81294 or equivalent.

(iii) Remove the masking tape from the engine drive shaft assembly.

(iv) Clean the surface with methyl ethyl ketone, Federal Spec. TT-M-261 or equivalent.

(v) Fluorescent-penetrant-inspect the cleaned area in accordance with MIL-I-6866, Type 1, Method C or equivalent.

(vi) If any cracks are found, remove the engine combining gear box/angle gear box drive shaft assembly from service and reinstall an airworthy part in accordance with the standard maintenance instructions.

(vii) If no cracks are found, remove the developer background used in the fluorescent penetrant inspection. Use a blacklight to aid in complete removal of the developer.

(viii) Apply two coats of AMLGUARD, in accordance with MIL-C-85084 (TS), Type 1, or equivalent, over all the surfaces in the inspection area. Allow a ½-hour drying time between coats.

(c) Install the engine combining gear box/angle gear box drive shaft assembly on the helicopter in accordance with standard maintenance instructions.

Note.—Sikorsky Alert Service Bulletin No. 56B35-30, dated May 17, 1989, applies to this AD.

(d) The aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where compliance can be accomplished.

(e) An alternate method of compliance or adjustment of the compliance times, which provides an equivalent level of safety, may be used if approved by the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts.

Note.—The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the manager of the Boston Aircraft Certification Office.

Issued in Fort Worth, Texas, on October 30, 1989.

James D. Erickson,
Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.

[FR Doc. 89-26529 Filed 11-9-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 142

Manufacturer/Shipper Identification Required at Time of Entry

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to require that all importers provide the name and address of the manufacturer or shipper of imported merchandise on each invoice. The addition of this information on the invoice is necessary to enhance Customs ability to perform its cargo documentation and improve overall efforts to process entries as expeditiously as possible with a minimum of processing delays.

DATE: Comments must be received on or before December 13, 1989.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Leonard Cianciotto or Patricia Flynn, Office of Inspection and Control, U.S. Customs Service (202) 566-5354.

SUPPLEMENTARY INFORMATION: Background

As part of its ongoing effort to improve the processing of cargo and thus provide quicker, more efficient service to importers, Customs has developed several methods which take advantage of the developing automated information-processing technology. A principal element of that effort has been the adoption of the Automated Commercial System (ACS). Through this system, importers are able to have their merchandise quickly cleared through the entry documentation process. One of the critical elements which enables the ACS process to function efficiently is an item known as the "Manufacturer ID". Instruction for standardized construction of this code, which is intended to provide a unique piece of data to be used in various automated systems, were provided in T.D. 87-88, 52 FR 24084, June 26, 1987. Use of this "Manufacturer ID" was required as of July 27, 1987, for all forms processed through the cargo selectivity module of the ACS.

At the time the "Manufacturer ID" requirement was implemented, Customs had no record of many of the manufacturers for whom IDs were being developed. Additionally, new manufacturers appear constantly. For the ACS cargo selectivity module used in entry processing to work efficiently, it is necessary that the system be able to verify the "manufacturer ID" against a known manufacturer's or shipper's name and address. There is no specific requirement in the Customs Regulations that the name and address of the manufacturer or shipper of the merchandise being imported appear on any entry document. Section 142.9(a) sets forth the required contents of the invoice to be submitted at the time of entry. Information regarding the manufacturer/supplier is not required, but is optional. Section 141.86, sets forth the required contents of the invoice for submission with the entry summary. This summary must be filed no later than 10 days after the filing of the entry documentation. However, the regulations provide the importer with the option of providing information on either the seller or the shipper of the merchandise, neither of which may be the actual manufacturer.

The Customs cargo documentation system needs to have a readily verifiable procedure to match manufacturers and merchandise. By requiring that the name and address of the manufacturer or shipper appear on the invoice submitted at the time of entry, Customs will have the information necessary to realize the full

potential of the ACS. Accordingly, Customs is proposing to amend its regulations to achieve this objective.

Comment Period

Because all delays in obtaining the information sought by the amendment will seriously detract from Customs ability to perform necessary cargo inspection and processing operations, it has been deemed necessary to limit the comment period on the proposed amendment to 30 days from the date of the publication of this Notice in the Federal Register.

Comments

Before adopting the proposed amendment, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that, if adopted, the proposed amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1515-____), Washington, DC 20503, with copies to the U.S. Customs Service at the address previously specified.

The collection of information contained in this regulation is in § 142.6(a). This information is required

by the U.S. Customs Service to enable it to perform necessary cargo inspection and processing operations. This information will be used to verify the validity of manufacturer/shipper identification numbers which are used in the Customs Automated Commercial System (ACS). The likely respondents are businesses or other for-profit institutions.

Estimated total annual reporting and/or recordkeeping burden: 6000 hours.

Estimated average annual burden per respondent and/or recordkeeper: 12 hours.

Estimated number of respondents and/or recordkeepers: 500.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 142

Entry process.

The Proposed Amendment

It is proposed to amend 19 CFR part 142 as set forth below.

PART 142—[AMENDED]

1. The authority citation for part 142 would continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. In § 142.6, paragraph (a) introductory text is republished and a new paragraph (a)(5) is added to read as follows:

§ 142.6 Invoice requirements.

(a) Contents

The commercial invoice, or the documentation acceptable in place of a commercial invoice in those instances listed in § 141.83(d) of this chapter, shall be furnished with the entry and before release of the merchandise is authorized. The commercial invoice or other acceptable documentation shall contain:

(5) The name and complete address of the individual or firm who is responsible for invoicing the merchandise (for example, the manufacturer or the shipper).

Approved: November 3, 1989.

Michael H. Lane,

Acting Commissioner of Customs.

Dennis M. O'Connell,

Acting Assistant Secretary of the Treasury.

[FR Doc. 89-26558 Filed 11-9-89; 8:45 am]

BILLING CODE 4820-02-M

RAILROAD RETIREMENT BOARD

20 CFR Part 212

RIN 3320-AA70

Military Service

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend part 212 of its regulations by adding a new period of military service which is now creditable under the Railroad Retirement Act (RRA) in certain cases in order to reflect certain Amendments to that Act.

DATE: Comments must be submitted on or before December 13, 1989.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Stanley Jay Shuman, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4568 (FTS 386-4568).

SUPPLEMENTARY INFORMATION: Military service is creditable under the RRA if it was performed during a war service period and was preceded by railroad service. See section 3(i)(2) of the RRA. Section 1(g)(2) of the RRA defines a war service period as any war period, or, with respect to any individual who was in military service at the end of a war period, the period during which such individual was required to remain in service following the end of the war period, or a period of involuntary military service or a period after September 7, 1939, with respect to which there was proclaimed a state of national emergency. Section 7304(a) of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Title VII of Public Law 100-647) amended section 1(g)(2) of the RRA to provide that military service between June 15, 1948 and December 15, 1950 (the period between the end of the national emergency which had been proclaimed with respect to World War II and the beginning of the next state of national emergency resulting from the Korean conflict) shall be deemed a war service period with respect to an individual if, following the employee's release from active military service, he or she returned to railroad service in the year he or she was separated from service or the following year without any other intervening employment.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required.

In addition, this part does not impose any requirement for the collection of information within the meaning of the Paperwork Reduction Act of 1980.

List of Subjects in 20 CFR Part 212

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, part 212, Chapter II, title 20 of the Code of Federal Regulations is proposed to be amended as follows:

PART 212—MILITARY SERVICE

1. The authority citation for part 212 is revised to read as follows:

Authority: 45 U.S.C. 231f.

2. Section 212.4, paragraph (f) is revised to read as follows:

§ 212.4 Periods of creditable military service.

(f) June 15, 1948 through December 15, 1950. This service is creditable if:

- (1) Entered into involuntarily; or
- (2) Entered into voluntarily, but only if:

(i) The individual who seeks credit for this service performs service as an employee for an employer as defined in part 202 of this chapter either in the year of his release from active military service or in the year following such release, and;

(ii) Does not engage in any employment not covered by part 203 between his release from active military service and his commencement of service for an employer.

Dated: November 3, 1989.
By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-26475 Filed 11-9-89; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AD91

Loan Guaranty; Implementation of Public Law 100-198

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its loan guaranty regulations (38 CFR part 36) to comply with certain provisions of

Public Law 100-198, the Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987, as amended by Public Law 100-253, the Veterans' Home Loan Program Emergency Amendments of 1988. Changes which VA proposes to incorporate into the regulations by these amendments are: (1) An increase in the maximum amount of entitlement from \$27,500 to \$36,000, (2) a revision of the method for calculating the guaranty amount, (3) a revision of the occupancy requirements, and (4) a revision of the requirements for refinancing loans.

DATES: Comments must be received on or before December 13, 1989. Comments will be available for public inspection until December 26, 1989. VA proposes to make these regulatory amendments effective 30 days after publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments will be available for public inspection in Room 132, Veterans Service Unit, at the above address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until December 26, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Schneider, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, (202) 233-3042.

SUPPLEMENTARY INFORMATION: VA is proposing to incorporate into its regulations several changes to comply with certain provisions of Public Law 100-198 as amended by Public Law 100-253.

Section 36.4302 of 38 CFR part 36 describes the method for calculating the guaranty for loans guaranteed under 38 U.S.C. 1810. Prior to enactment of Public Law 100-198 VA would guarantee lenders against loss at a rate of 60 percent of the loan amount, up to a maximum of \$27,500. The maximum amount of entitlement has been increased from \$27,500 to \$36,000 and a two-tiered guaranty has been established based on the loan amount. For loans of \$45,000 or less, 50 percent of the loan is guaranteed, and for loans above \$45,000, 40 percent of the loan is guaranteed up to \$36,000, whichever is less, but not less than \$22,500. VA is proposing to amend § 36.4302 to reflect this change.

Occupancy requirements for VA guaranteed loans are contained in various sections of the regulations. The

occupancy requirements for loans guaranteed under 38 U.S.C. 1810, including regular refinancing loans, as well as interest rate reduction refinancing loans (loans to refinance in order to lower the interest rate where the original loan was guaranteed by VA), are contained in §§ 36.4303, 36.4306, and 36.4306a respectively.

Prior to enactment of Public Law 100-198 the veteran was required to physically occupy the property to obtain a VA guaranteed loan. The new law provides that the occupancy requirements will be met in the case of a veteran who is unable to occupy the property because of active duty status in the Armed Forces if the veteran's spouse certifies that he or she will occupy the property as his or her home. VA proposes to amend §§ 36.4303, 36.4306, and 36.4306a to reflect this change.

Public Law 100-198 also provides that for interest rate reduction refinancing loans closed on or after January 21, 1988, previous occupancy by the veteran or spouse will satisfy the occupancy requirements. VA proposes to amend § 36.4306a to delete the requirement that the veteran or spouse still occupy the property at the time of refinancing the existing VA guaranteed loan.

Public Law 100-198 reduced the amount of a refinancing loan to not more than 90% of the appraised value of the property, and VA proposes to amend § 36.4306 to reflect this reduction.

Public Law 100-198 extended the term of interest rate reduction refinancing loans. The new loan term is for up to 10 years longer than the term of the original loan, subject to the maximum of 30 years and 32 days. VA proposes to amend § 36.4306a to conform to this change.

The provisions of Public Law 100-198 included in the appropriate regulations by this amendment have been implemented administratively. Similar changes concerning the increase in entitlement, calculation of the guaranty amount, and occupancy requirements affect loans for manufactured homes guaranteed by VA under 38 U.S.C. 1812. These changes are being made to the 4200 series of 38 CFR part 36 separately.

The Secretary hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The proposed amendments simply update VA regulations to incorporate the changes which have already been made by Public Law 100-198 as amended by Public Law 100-253.

The Secretary has also determined that the proposed regulatory amendments are not a major rule within the meaning of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of \$100 million or more, and will not cause a major increase in costs or prices for consumers or individual industries, nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.118.

These amendments are proposed under Public Law 100-198 as amended by Public Law 100-253 and the authority granted the Secretary by section 210(c) of title 38, United States Code.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan program—housing and community Development, Manufactured homes, Veterans.

Approved: October 19, 1989.
Edward J. Derwinski,
Secretary.

PART 36—[AMENDED]

38 CFR part 36, Loan Guaranty, is proposed to be amended as follows:

§ 36.4302 [Amended]

1a. In § 36.4302 redesignate paragraphs (b) through (i) as paragraphs (c) through (j) respectively.

b. In § 36.4302 in newly designated paragraphs (d)(1) through (3) remove the words "\$27,500" wherever they appear and add, in their place, the words "\$36,000".

c. In § 36.4302 in newly designated paragraphs (d)(1) through (3) remove the numbers "1819" wherever they appear and add, in their place, the numbers "1812".

d. In § 36.4302 paragraph (a) is revised and paragraph (b) is added, an authority citation is added to newly designated paragraph (d)(2), and the authority citation to newly designated paragraph (d)(3) is revised to read as follows:

§ 36.4302 Computation of guaranties or insurance credits.

(a) With respect to a loan to a veteran guaranteed under 38 U.S.C. 1810 the guaranty shall not exceed the lesser of—

(1)(i) 50 percent of the original principal loan amount where the loan amount is not more than \$45,000; or

(ii) The lesser of \$36,000 or 40 percent of the original principal loan amount where the loan amount exceeds \$45,000, except that the guaranty amount shall not be less than \$22,500; or

(2) The maximum amount of guaranty entitlement available to the veteran.

(b) With respect to a loan guaranteed under 38 U.S.C. 1810(a)(8) or (9)(B)(i) the dollar amount of guaranty may not exceed the original dollar amount of guaranty on the loan being refinanced.

(Authority: 38 U.S.C. 1803(a))

(d) * * *

(2) * * *

(Authority: 38 U.S.C. 1803(a), 1812(c))

(3) * * *

(Authority: 38 U.S.C. 1893(a), 1812(c))

2. In § 36.4303 paragraph (f) is revised to read as follows:

§ 36.4303 Reporting requirements.

(f) Evidence of a guaranty will be issued by the Secretary by appropriate endorsement on the note or other instrument evidencing the obligation, or by a separate certificate at the option of the lender. Notice of credit to an insurance account will be given to the lender. Unused certificates of eligibility issued prior to March 1, 1946, are void. No certificate of commitment shall be issued and no loan shall be guaranteed or insured unless the lender, the veteran, and the loan are shown to be eligible. Evidence of guaranty or insurance will not be issued on any loan for the purchase or construction of residential property unless the veteran or the veteran's spouse in the case of a veteran who cannot occupy the property because of active duty status with the Armed Forces, certifies in such form as the Secretary shall prescribe, that the veteran, or spouse of the active duty veteran, intends to occupy the property as his or her home. Guaranty or insurance evidence will not be issued on any loan for the alteration, improvement, or repair of any residential property or on a refinancing loan unless the veteran, or spouse of an active duty service member, certifies that he or she presently occupies the property as his or her home. An exception to this is if the home improvement or refinancing loan is for extensive changes to the property which will prevent the veteran or the spouse of the active duty veteran from occupying the property while the work is being completed. In such a case the veteran or spouse of the active duty veteran must certify that he or she intends to occupy or reoccupy the property as his or her

home upon completion of the substantial improvements or repairs. All of the mentioned certifications must take place at the time of loan application and closing except in the case of loans automatically guaranteed, in which case veterans or in the case of an active duty veteran, the veteran's spouse shall make the required certifications only at the time the loan is closed.

(Authority: 38 U.S.C. 1804(c))

3. In § 36.4306, paragraphs (a)(1) and (a)(2) are redesignated as paragraphs (a)(2) and (a)(3) respectively, the introductory text of paragraph (a) is revised, paragraph (a)(1) is added, paragraph (c), the last sentence of paragraph (g)(5) and the authority citation to paragraph (g) are revised to read as follows:

§ 36.4306 Refinancing of mortgage or other lien indebtedness.

(a) Any loan for the purpose of refinancing (38 U.S.C. 1810(a)(5)) an existing mortgage loan or other indebtedness secured by a lien of record on a dwelling or farm residence owned and occupied or to be reoccupied if the refinancing loan is for the completion of major alterations, repairs or improvements to the property, by an eligible veteran as the veteran's home, or in the case of an eligible veteran unable to occupy the property because of active duty status in the Armed Forces, occupied or to be reoccupied by the veteran's spouse as the spouse's home, shall be eligible for guaranty in an amount as computed under § 36.4302(a) provided that—

(1) The amount of the loan may not exceed an amount equal to 90 percent of the reasonable value of the dwelling or farm residence which will secure the loan, as determined by the Secretary.

(Authority: 38 U.S.C. 1810(e)(1) and 1810(h))

(c) Nothing shall preclude guaranty of a loan to an eligible veteran having home loan guaranty entitlement to refinance under the provisions of 38 U.S.C. 1810(a)(5) a VA guaranteed or insured (or direct) mortgage loan made to him or her which is outstanding on the dwelling or farm residence owned and occupied or to be reoccupied after the completion of major alterations, repairs, or improvements to the property, by the veteran as a home, or in the case of an eligible veterans unable to occupy the property because of active duty status in the Armed Forces, occupied or to be reoccupied by the veteran's spouse as the spouse's home.

(Authority: 38 U.S.C. 1810(e)(1))

(g) * * *

(5) * * * However, the total guaranty may not exceed 50 percent of the new loan if the new loan amount is \$45,000 or less, or 40 percent up to \$36,000 of the new loan if the new loan amount is more than \$45,000, but may not be less than \$22,500 if the loan amount exceeds \$45,000.

(Authority: 38 U.S.C. 1803(a))

4. In § 36.4306a paragraphs (a) and (b) are revised to read as follows:

§ 36.4306a Interest rate reduction refinancing loan.

(a) Pursuant to 38 U.S.C. 1810(a) (8) and (9)(B)(i), a veteran may refinance an existing VA guaranteed, insured or direct loan to reduce the interest rate payable on the existing loan provided the following requirements are met:

(1) The loan must be secured by the same dwelling or farm residence as the loan being refinanced; and

(2) The veteran must own the dwelling or farm residence securing the loan and

(i) Must occupy the dwelling or residence as his or her home; or

(ii) Must have previously occupied the dwelling or residence as his or her home and must certify, in such form as the Secretary shall require, that he or she has previously occupied the dwelling or residence; or

(iii) In any case in which the veteran is on, or was on, active duty status as a member of the Armed Forces and is unable, or was unable, to occupy the residence of dwelling as a home because of such active duty status, the spouse of the veteran must occupy, or must have previously occupied, such dwelling or residence as the spouse's home and must certify to that occupancy in such form as the Secretary shall require.

(Authority: 38 U.S.C. 1810(e)(1))

(3) The amount of the refinancing loan may not exceed an amount equal to the sum of the balance of the loan being refinanced and such closing costs as authorized by § 36.4312(d) and a discount not to exceed a dollar amount determined in accordance with § 36.4312(d)(7)(i);

(4) The dollar amount of the guaranty of the 38 U.S.C. 1810(a) (8) or (9)(B)(i) loan may not exceed the original dollar amount of guaranty applicable to the loan being refinanced, less any dollar amount of guaranty previously paid as a claim on the loan being refinanced; and

(5) The term of the refinancing loan (38 U.S.C. 1810(a)(8)) may not exceed the original term of the loan being financed plus ten years or the maximum loan

term allowed under 38 U.S.C. 1803(d)(1), whichever is less. For manufactured home loans that were previously guaranteed under 38 U.S.C. 1812 the loan term, if being refinanced under 38 U.S.C. 1810(a)(9)(B)(i), may exceed the original term of the loan but may not exceed the maximum loan term allowed under 38 U.S.C. 1803(d)(1).

(Authority: 38 U.S.C. 1810(e)(1))

(b) Notwithstanding any other regulatory provision, the interest rate reduction refinancing loan may be guaranteed without regard to the amount of guaranty entitlement available for use by the veteran, and the amount of the veteran's remaining guaranty entitlement, if any, shall not be charged for an interest rate reduction refinancing loan. The interest rate reduction refinancing loan will be guaranteed with the lesser of the entitlement used by the veteran to obtain the loan being refinanced or the amount of the guaranty as calculated under § 36.4302(a) of this part. The veteran's loan guaranty entitlement originally used for a purpose as enumerated in 38 U.S.C. 1810(a) (1) through (7) and (9)(A) (i) and (ii) and subsequently transferred to an interest rate reduction refinancing loan (38 U.S.C. 1810(a) (8) or (9)(B)(i)) shall be eligible for restoration when the interest rate reduction refinancing loan or subsequent interest rate reduction refinancing loans on the same property meets the requirements of § 36.4302(h).

(Authority: 38 U.S.C. 1803(a))

5. Section 36.4502 is revised to read as follows:

§ 36.4502 Use of guaranty entitlement.

The guaranty entitlement of the veteran obtaining a direct loan which is closed on or after February 1, 1988, shall be charged with the lesser of the loan amount or an amount which bears the same ratio to \$36,000 as the amount of the loan bears to \$33,000. The charge against entitlement of a veteran who obtained a direct loan which was closed prior to the aforesaid date, shall be the amount which would have been charged had the loan been closed subsequent to such date.

(Authority: 38 U.S.C. 1811(d)(2)(A))

§ 36.4503 [Amended]

6a. In § 36.4503 paragraph (a) remove the words "October 1, 1980" where they appear and add, in their place, the words "February 1, 1988".

b. In § 36.4503 paragraph (a) remove the words "\$27,500" and add, in their place, the words "\$36,000".

c. In § 36.4503 in the authority citation remove the words "(1) and" so the authority citation correctly reads "38 U.S.C. 1811(d)(2)(A)".

[FR Doc. 89-26499 Filed 11-9-89; 8:45 am]

BILLING CODE 8320-01-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM89-5]

Procedures for Consideration of Contract Rates

Issued November 6, 1989.

AGENCY: Postal Rate Commission.

ACTION: Further invitation for comments.

SUMMARY: The Postal Rate Commission received a petition for a rulemaking to create procedures for consideration of rates arrived at by contractual negotiation between the Postal Service and one or more mailers. Interested persons were invited (54 FR 30557, July 21, 1989) to file initial comments concentrating on the legal feasibility of such a mechanism under the Postal Reorganization Act.

On consideration of these comments, the Commission has concluded that possible reorientation of the existing mail classification system would be a more profitable direction in which to seek the advantages said to be associated with contract ratemaking. This notice solicits comments and suggestions for such a reorientation.

DATE: Comments must be received by February 12, 1990.

ADDRESS: Written comments and correspondence should be addressed to Charles L. Clapp, Secretary, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268-0001 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, Postal Rate Commission (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION:

Introduction

This notice sets forth and explains our disposition of the petition for rulemaking filed by Advo-System, Inc. (Advo) and made the subject of initial comments by our July 17, 1989, notice in this docket. We asked commenters to concentrate on the legal feasibility of Advo's proposal that we establish one or more sets of procedures to consider contract rates, though they were also free to state preliminary views on other relevant

matters. Twelve participants¹ filed comments.

While analysis of the postal ratemaking statute, aided by the comments filed in this docket, shows that new procedural rules for consideration of contract rates—as Advo's petition uses that term—would serve no practical purpose, the petition does raise important questions about how postal services are defined and priced. We are therefore maintaining this docket in existence, but redirecting it toward exploration of mechanisms that might secure the advantages Advo claims for the contract rates described in its petition, without contravening the Postal Reorganization Act. In this Order we (i) describe Advo's two alternative proposals; (ii) explain our conclusion that they are, respectively, inconsistent with the Act and in practice duplicative of existing mechanisms; and finally (iii) describe and explain the direction we find most profitable for further inquiry.

The Advo Proposals

Advo describes two different forms of contract rate it believes the Commission should consider:

1. The Commission might, after considering cost and other relevant evidence, establish a range of permissible rates for particular subclasses; the Postal Service and individual mailers would be free to negotiate rates within this range.

2. The Postal Service and one or more mailers would negotiate a rate and service package which would then (i) be submitted to the Commission for review, and (ii) thereafter be available on the same terms to all potential users.

Apart from the general question whether the Act contemplates or permits contract rates in any form, the commenters most often dealt with Advo's two alternatives separately.

Contract Rates Under the Act

The most obvious question is whether the Act permits (any form of) contract rates. Advo argues that it does, with varying degrees of support from DJ, MPA, and the Postal Service; others argue that it does not.

Advo's main arguments are that the Act does not in terms forbid negotiated rates; and that since the Act generally

¹ Advo, American Newspaper Publishers Association (ANPA), Association of Business Publishers (ABP), Coalition of Non-Postal Media (CNPM), Dow Jones & Company (DJ), Magazine Publishers Association (MPA), National Newspaper Association (NNA), the Commission's Office of the Consumer Advocate (OCA), Third Class Mail Association (TCMA), United Parcel Service (UPS), the Postal Service, and Werhowsky & Company.

aimed at reform and streamlining of the postal system, such negotiation is at least consistent with the overall statutory purpose. Advo concedes that the Act does not specifically permit negotiated rates and that they were not employed either before or since its passage. However, it argues that the contracting power granted the Service [39 U.S.C. section 401(3)] is not elsewhere limited by the Act and is broad enough to encompass ratemaking by contract. Moreover, it contends that neither of its proposals would bypass the procedures of 39 U.S.C. ch. 36, since both involve Postal Rate Commission review of the negotiated rates. With certain qualifications, including the important caveat that cost avoidance would be the principal rationale for any contract rate lower than the rate charged the subclass generally, MPA supports this reasoning.

Opposition to Advo's position takes a number of forms. Some commentators argue that it would effectively bypass the present, mandatory ch. 36 procedures. ABP, for instance, argues that public hearings are mandatory in the development of rates, and that the proposals delegate to private parties the initiative, properly the Service's alone, under section 3622(a), to launch rate changes. CNPM, NNA, and UPS also argue that the proposals improperly limit the Commission's role. The OCA points out that unilateral rate-changing authority is granted only by sections 3627 (failure of appropriations for revenue forgone) and 3641 (failure to complete rate case in 10 months), and that the Postal Service's contracting power furnishes no counterargument since the Governors are a necessary participant in lawful ch. 36 rate changes. ANPA and UPS make the point that section 3622 contemplates ratemaking by class and subclass of mail² and that rates for individual customers conflict with this structure. TCMA questions whether recommending a range of rates would discharge our duty to make a recommendation on specific rate changes.

Besides suggesting that contract rates would violate procedural requirements, some comments question whether such rates would not in principle violate substantive ratemaking standards—not just the criteria of section 3622(b) but also general policy rules in ch. 1 of the Act and, particularly, section 403(c) forbidding undue or unreasonable discrimination or preference.³ Thus

even if it were established that Advo's proposals for Commission involvement in contractual ratemaking satisfied the procedural requirements of ch. 36, some issues would remain as to whether any contract rate, simply by virtue of being a contract rate, would under the statute be impossible for the Commission to approve.

Of particular importance here are suggestions that because the Act calls for classification of mail, and for fixing of rates by classes, there is simply no place for exceptional "non-class" rates established by contract. ANPA observes that of two identically-situated mailers one might succeed in negotiating a lower rate than the other, and that if this possibility is accepted it is evident that relative skill or opportunity in negotiation can be the only source of the difference. As ANPA argues, this is not a recognized criterion under the Act. UPS takes a similar position, and cites case law and legislative history for the proposition that—

Congress recognized that the political pressures exerted on postal economics caused the widespread public impression that the influence of special interests had a determining effect on the structure of postal rates * * *. To permit large mailers to negotiate special contractual deals would only resurrect and reinforce that impression.

Advo proposes to inject into the ratemaking process the very same influences that the Act was intended to eradicate.

UPS Initial Comments at 9. The OCA makes similar arguments.

These arguments from overall statutory purpose are particularly interesting because, in large measure, we are asked to draw inferences from the silence of the statute rather than from its positive language. Advo's argument, somewhat simplified, is: Contract rates are a recognized pricing technique generally; the Act does not specifically forbid them in postal pricing; therefore the Commission may entertain them. Arguments of this type are undercut, however, if there is reason to think that the overall purpose of the statute (which may fail to forbid them specifically only because, as Advo recognizes, they were not in use in 1970) would be disserved by the suggested new mechanism.

We need not rest our determination wholly on an attempt to settle this broad question, because we are not in the situation of, e.g., a court faced with an actual attempt by the Postal Service and

a mailer to negotiate a non-tariff rate. The question before us is the more modest one whether a new set of procedures allowing for such rates would be likely to serve any useful purpose.

The Basic Structure of Ratemaking Under the Act.

Some of the dispute outlined above may be resolved, so far as it need be for our purposes, by examining more closely the fundamental structure of ratemaking under the Act. One foundation of Advo's argument for the lawfulness of contract ratemaking is that the Commission would continue to review the rates in question. This raises the issue, on which neither Advo nor most other commentators focus, of whether the Commission's function is to "review" rates or, with the final concurrence of the Governors, to "make" rates in some more fundamental sense.

It is quite true that the Commission does not, *sua sponte*, initiate rate change proceedings; that power belongs to the Postal Service under section 3622(a).⁴ Likewise, it is customary—though, significantly, not mandatory⁵—for the Service to include specific proposals for new rates in its section 3622 filings. In other respects, however, the structure of the Act suggests that the Commission was thought of as more than a mere reviewer of Postal Service proposals.

First, the Act—despite plenty of precedent in other ratemaking statutes—did not provide a mechanism whereby the Commission could allow a rate change to go into effect without review proceedings. Rates can be changed only following a recommended decision by the Commission and its acceptance by the Governors.⁶ In ratemaking statutes where the underlying assumption is that the agency reviews rates established in the first instance by the regulated firm⁷,

⁴ Section 3662 provides that interested parties may file complaint cases alleging illegality of a rate currently charged, and that such cases lead to issuance of a recommended decision under §§ 3624–3625.

⁵ Section 3622(a) reads: "From time to time the Postal Service shall request the Postal Rate Commission to submit a recommended decision on changes in a rate or rates of postage or in a fee or fees for postal services if the Postal Service determines that such changes would be in the public interest and in accordance with the policies of this title. The Postal Service may submit such suggestions for rate adjustments as it deems suitable." [Emphasis added.]

⁶ This point must be distinguished from the question whether the Commission can make a recommended decision without hearings. Section 3624(b)(5) makes it clear that, if all parties agree, it may.

⁷ This distinction emerged in some detail in *United Gas Pipe Line Co. v. Mobile Gas Service*

² Subsections (b) (2), (3), and (7) specifically refer to these classificational units.

³ Even if it were assumed, *arguendo*, that contract rates could lawfully be established without

observance of ch. 36 requirements, they would still be subject to these provisions, which apply directly to the Postal Service as well as to the Commission's ratemaking process.

it has been common to provide that the rates become effective at some fixed time after being filed with the agency, unless the agency suspends them and schedules hearings. Our statute takes the opposite approach: in a normal case⁸ there can be no rate change until the Commission has held hearings (or accepted a settlement) and issued a decision, and the Governors have registered their approval. The natural inference is that the ch. 36 process itself generates the rate change, and is not provided simply to review an otherwise independently effective rate change by the Postal Service.

Moreover, the courts have treated the Commission as the agency principally responsible for cost allocation and rate design decisions. *National Association of Greeting Card Publishers v. U.S. Postal Service*, 462 U.S. 810, 821 (1983); *Time, Inc. v. U.S. Postal Service*, 685 F.2d 760, 771 (2d Cir. 1982); *National Association of Greeting Card Publishers v. U.S. Postal Service*, 607 F.2d 392, 401 (D.C. Cir. 1979), cert. denied, 444 U.S. 1025 (1980). None of these decisions, of course, considered the precise question now before us; but they counsel caution in accepting the proposition that review of a negotiated rate agreement, which may not rest on a fully articulated cost analysis, or indeed on any analysis at all,⁹ would fulfill the Commission's statutory function. Certain other practical questions are glossed over by generalized references to the Commission's "reviewing" negotiated rate and service arrangements. Advo does not discuss whether, and to what extent, its proposal would permit the Commission to modify the negotiated arrangement submitted to it for "review." That this is by no means an imaginary problem is clear from the

settlement agreements submitted in some ch. 36 cases¹⁰; they commonly recite that the agreed-upon disposition must be accepted as a whole and not modified, or the agreement ceases to exist. If Advo's intent is that the Commission simply vote "yea" or "nay" on a submitted agreement, it seems clear that the "review" contemplated by its proposal amounts to considerably less than that exercised in a normal ch. 36 proceeding.

Another area of doubt arises from the statutory directive that in recommending rates we consider the interests of competitors [section 3622(b)(4), (5)]. The Supreme Court has made it clear that we are to carry out this mandate when we assign institutional cost responsibility to the classes of mail. *National Association of Greeting Card Publishers v. U.S. Postal Service*, 462 U.S. 810, 829, fn. 24 (1983). We can presume that a competitor of the Postal Service will not be party to contract-rate negotiations between the Service and a mailer. Since the competitor's legal interest in the resulting rate entails adequately knowing the contract mailer's attributable cost, so that the implicit institutional-cost contribution can be tested against the statute, there is additional cause for concern about the possibility of inadequately-documented contract rate filings.

As a result, there is substantial uncertainty as to whether the Commission review supposedly preserved in the Advo proposals in fact corresponds to what Congress expected of us. It will therefore be particularly important to see if the advantages Advo points to (assuming for the moment that they do exist) in fact distinguish its proposal from a more conventional review mechanism.

The Discrimination Problem

As noted above, § 403(c) forbids undue or unreasonable discrimination or preferences. While the potential

interaction of this provision and the suggestions made by Advo could be stated in a number of ways, we think it adequate to reduce it to two questions:

1. Does any contract rate system whatever violate § 403(c), simply by virtue of being a contract rate system?

2. Even if 1. is answered "no," do (various kinds of) contract rate mechanisms present such a substantial opportunity for improperly discriminatory or preferential arrangements as to be, themselves, undesirable?

MPA makes the useful point that one would expect cost savings to be the basis for any contractual arrangement providing a rate lower than that charged the subclass generally. In ratemaking terms, this amounts to saying that if a particular mailer imposes attributable costs that are less than those for the subclass as a whole, a corresponding contractual reduction in its rate might be appropriate. We may accept for argument's sake that such a reduction, assuming it to be otherwise lawful, would not constitute undue or unreasonable discrimination. That failing is customarily defined as a difference in price for substantially similar service, rendered contemporaneously, under substantially similar conditions. If the mailer shows that the conditions under which a service is rendered to it are materially less onerous and costly than is usual in the relevant subclass, one of the conditions for undue discrimination is not met.

This formulation implies that negotiated differences in contribution to institutional cost would not escape section 403(c). A single-customer price reduction based on cost-of-service differences is theoretically justifiable even where price discrimination in general is most strongly condemned.¹¹ However, it is not so clear that accepting a lower rate of return from one customer than is demanded from another, similar customer comports with antidiscrimination provisions like section 403(c). It has sometimes been approved:

Manifestly, the loss of Cooperative Customers [who were capable of generating electricity for themselves], which account for over 90% of Delmarva's annual revenues from

Corp., 350 U.S. 332 (1956), interpreting the Natural Gas Act. The Federal Power Act is structurally similar. The OCA (Comments at 10) raises the question whether, under *Mobile* and its companion case [*FPC v. Sierra Pacific Power Co.*, 350 U.S. 345 (1956)], the Service might bind itself by long-term fixed-rate contracts, so that some mailers could escape the next general increase effectuated under § 3622. The cases perhaps do raise that question—but only if we assume that the Service has the kind of inherent unilateral price-setting power that was attributed to gas pipelines and electric utilities by the *Mobile* and *Sierra* decisions. If it does not, then it is hard to see how it could by contract insulate selected mailers from the effects of a general increase. We think the ratemaking statute establishes that no such power exists, and so we do not consider further the objection based on the *Mobile-Sierra* doctrine.

⁸ That is, one where the 10-month deadline of § 3624(c)(1) is met.

⁹ It is not uncommon under some regulatory schemes for rate-case settlement agreements to declare explicitly that the rate agreed on is not supported by any particular analytical method but represents a simple "dollar settlement."

¹⁰ Settlements of cases in which supporting materials have been filed by the Service, and opportunity for hearings on the record afforded by the Commission, as the statute requires, are not unknown. In those cases, if the settlement is unanimous, it can be recommended to the Governors simply because all the supporting facts of record are undisputed. If it is not unanimous, the Commission may not recommend it as a settlement, though we may still recommend it as a controverted disposition on the merits. *Pennsylvania Gas & Water Co. v. FPC*, 463 F.2d 1242 (D.C. Cir. 1972); *Michigan Consolidated Gas Co. v. FPC*, 283 F.2d 204 (D.C. Cir.), cert. denied sub nom. *Panhandle Eastern Pipe Line Co. v. Michigan Consolidated Gas Co.*, 364 U.S. 913 (1960). This is to be distinguished from the possibility implicit in Advo's proposal: that a change in rates might be initially submitted without enough supporting material to permit proper Commission analysis.

¹¹ The Robinson-Patman Act, 15 U.S.C. 13(a), allows for a cost-justification defense of otherwise prohibited price discrimination: "... nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered." [P]

wholesale sales, could have a crippling effect on Delmarva's ability to supply electrical energy to its Tariff Customers at rates which the Tariff Customers could afford to pay. Under such circumstances, where the initiation of rates is vested in the utility, subject to a determination by the Federal Power Commission that the rates are just and reasonable, and are not unduly discriminatory, Delmarva had the right to elect not to earn a rate of return which the Commission found fair, but which would have the potential effect of destroying its major wholesale market. By the same token, this evidence fully justified the Commission in deciding that the rate charged the Cooperative Customers, though . . . one which earned a lesser rate of return than that earned on sales to Tariff Customers, was not unduly discriminatory. . . .

St. Michaels Utilities Commission v. Federal Power Commission, 377 F.2d 912, 917 (4th Cir. 1967) (italics added). The considerations that led this court to sanction a difference as "not unduly discriminatory" were thus that—as noted above—the FPC's role was not to generate just and reasonable rates through its own proceedings, but rather to test those filed by jurisdictional utilities against the statutory standard; and that the utility acted reasonably in accepting a diminished return for shareholders rather than risk losing valuable customers altogether. Neither of these considerations is present in our case. We have explained our conclusion that the Commission's ratemaking role is different in kind from the FPC's. And the rate of return at issue in *St. Michaels* is not analogous to institutional cost contribution in postal ratemaking,¹² even though a species of value-of-service¹³ consideration played a role in the utility's opting for a lowered return.

The Relevance of Ratemaking for Classes

In this respect, it is of great significance that—as some commenters have noted—the Act speaks in terms of institutional cost contribution by classes of mail and types of mail service. 39 U.S.C. 3622(b)(3). This may of course be interpreted in more than one way. In what follows, we discuss these

interpretations in some detail. While the discussion may appear academic, it is of considerable practical importance in elucidating the underlying structure of postal ratemaking and demonstrating the degree to which rates that really depend on negotiation are foreign to it.

First, the mandate of section 3622(b)(3) could be read to mean that on the average a subclass is to produce the contribution to attributable cost that the Commission factors into the rates later established by the Governors. So interpreted (and considered in isolation) this requirement is not necessarily violated by charging different rates—as long as the (presumably lower) contract rates do not bring the class-wide institutional cost contribution below the established level. Such a deficiency would in turn be avoided if (i) the contractually-based reductions strictly reflected attributable-cost differences and nothing else, and the corresponding, unchanged institutional-cost contribution were stated on a per-piece basis;¹⁴ or (ii) the class-wide rate were set using an inflated institutional-cost contribution (markup) to allow for a reasonably-estimated loss of such contribution through subsequent contract-rate arrangements. The second alternative would clearly raise serious questions of undue discrimination, in that the tariff customer would effectively be taxed, in advance, for the benefit of the customer able to negotiate a favorable contract.¹⁵ We believe it is

¹⁴ Clearly, reducing the attributable-cost basis in the case of a particular mailer, and then applying to the reduced basis the same percentage markup as applied for the class-wide ratemaking computation, would lead to a shortfall in the class's institutional cost contribution. Percentage markups as used in § 3622 proceedings effectively presuppose a uniform attributable cost for every piece in the subclass. We can of course derive a percentage markup arithmetically by dividing the aggregate attributable cost into the class's revenue target. However, we cannot then get back to that revenue target by performing a series of computations wherein the individual attributable costs of less-than-average-cost pieces are multiplied by the markup to obtain an individual-piece revenue. At the purely theoretical level, we might do so (if volume effects are neglected) by performing such a computation for every piece rather than just those with lower-than-average attributable cost. But this would presuppose mailers prepared to contract with the Service for a rate higher than the one the schedule offers on the basis of intraclass cost averaging. The comments in this docket do not support this as a practical possibility. Accordingly, we think it more realistic, as well as more economical, to regard percentage markups as essential presupposing cost averaging within the relevant subclass.

¹⁵ In addition, estimating the amount of "cushion" needed to be reasonably sure that the whole subclass would recover its designed institutional-cost contribution might well be infeasible.

simply outside the range of ratemaking practicality.

The alternative reading of section 3622(b)(3) would make each piece in a given subclass responsible for making the same contribution to institutional costs. This interpretation in effect presupposes the averaging of cost per piece by virtue of the inclusion of all relevant pieces in the same subclass. Once that averaging is accepted, and the average cost per piece made part of the operational description of the subclass, further pricing computations are relatively plain sailing. By definition, all pieces in the subclass are deemed to have the same attributable cost¹⁶; the per-piece contribution (again, equal for each piece) can be expressed indifferently by a cents-per-piece add-on or a percentage markup. See fn. 14, above. It is evident that this reading of section 3622(b)(3) is, by virtue of these presupposed equalities, quite inconsistent with a mechanism for varying rates within the subclass by contract.

It may be objected that the reading last explained is unrealistic and thus wrong, since "everybody knows" that not every piece in a subclass costs the same to handle. But to argue thus simply amounts to pointing out that uniformity of attributable cost is being imposed as a methodological rule, rather than presented as an empirical result. We postulate uniform cost not because our cost measurements are defective but simply because discrete rates based on individual attributable costs for each piece of mail are a patent impossibility. Hence we must, under section 3622(b)(3) as well as section 3623, price postal services by classes. As in any system of regulated prices where classes of service are defined, the question is not so much "Are all the sales in a class uniform with respect to cost of service?" (to which the answer will generally be "no") as "Are the classes so drawn as to cover no unjustifiably large variations in cost of service between one sale and another?"¹⁷ Especially where individual transactions run into the billions, as with the Postal Service,¹⁸ it

¹⁶ For simplicity, we are here postulating a subclass with no more than a single base rate and with no worksharing discounts. Adding these features would merely complicate the reasoning without changing its essence.

¹⁷ There are, of course, numerous other criteria to be observed in setting up class boundaries. We have discussed them in some detail—most recently in Docket R87-1, in connection with the proposal for a bulk third-class carrier route subclass.

¹⁸ In distinguishing Federal Power Commission regulation of gas pipelines from other forms of ratemaking, the Supreme Court observed that ". . .

Continued

¹² While reasonable return on equity can be thought of as an economic cost, it is not, in the traditional utility ratemaking techniques underlying *St. Michaels*, part of the total cost of service, which was fully allocated to customer classes. (As interest on a utility's debt must be paid, at a fixed rate, it can be treated as at least analogous to such a cost.) By contrast, the Postal Service's total revenues must equal total accrued costs. Its institutional costs are not analogous, in this respect, to a return on equity but are simply the theoretically or in some cases empirically unallocable portion of accrued costs—all of which must be paid. Hence the Governors have no latitude to decide to forgo recovering some of them.

¹³ Cf. 39 U.S.C. 3622(b)(2).

seems pointless to hope for a manageable classification system that would produce cost uniformity in fact.

Nor is it a useful answer to argue that we need only abandon percentage markup as a pricing device and substitute cents per piece. Cents-per-piece has potential usefulness as a criterion of institutional-cost responsibility, most obviously for *interclass* comparisons. In the present analysis, making it the ruling criterion within a subclass simply returns us to the first alternative interpretation: we have in effect decided to add a uniform contribution in cents to each individual attributable cost imposed by the successive pieces in the subclass, and total the results.

This discussion implies, first, that any systematically authorized departures from tariffed rates must be justified mathematically by cost savings.¹⁹ If we read the statutory mandate that mail be classified and that each class produce an appropriate contribution to institutional costs as referring only to aggregate contribution, then the only way in which contract rates lower than the tariff rate could be accommodated without inviting unlawful discrimination is to restrict the departures from the tariff to demonstrated attributable-cost differences. On the other hand, if we read section 3622(b)(3) as requiring the same contribution from each piece in the subclass, then at least so long as we compute rates using percentage markups we have as an additional hurdle the postulate of (artificially) uniform attributable costs throughout the subclass.

The [Natural Gas] Act is in marked contrast to the Interstate Commerce Act, which in effect precludes private rate agreements by its requirement that the rates to all shippers be uniform, a requirement which made unnecessary any provision for filing contracts [with the ICC]. . . . The vast number of retail transactions of railroads made policing of individual transactions administratively impossible; effective regulation could be accomplished only by requiring compliance with a single schedule of rates applicable to all shippers. On the other hand, only a relatively few wholesale transactions are regulated by the Natural Gas Act and these typically require substantial investment in capacity and facilities for the service of a particular distributor."

United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332, 338-339 (1956). It seems clear that the Postal Service more closely resembles the railroads than the pipelines. As if in recognition of this circumstance, Congress instructed the Commission that rates should exhibit "simplicity of structure . . . and simple, identifiable relationships between the rates or fees charged the various classes of mail . . ." [§ 3622(b)(7)].

¹⁹ We note again, but without pursuing the point, that the comments do not consider the question whether, in a contract rate regime, the Postal Service would be authorized to refuse service at the tariffed rate on account of exceptionally high costs for a particular mailing, and instead propose to negotiate with the mailer for an appropriate surcharge. See fn. 14, above.

A second implication is that a good many of the arguments offered in favor of rate contracts may be satisfied by reforming mail classification rather than permitting outright exceptions to it.

Is Advo's Second Proposal Really a Scheme for Mail Classification Reform?

Advo's second proposal is for negotiated rate and service arrangements that would (i) be filed with the Commission and, if approved, (ii) be available on demand by any other user with qualifying mail. A number of commenters have questioned whether this amounts to more than a greatly ramified system of mail classification, and if so whether the "contract" aspect of the proposal has any real meaning.

Advo considers the distinction between the present classification system and a system involving contract rates to be that the former allows only what it calls "unilateral contracts": i.e., it is a regime in which the Postal Service must provide a service, defined in advance, at the stated price to anyone tendering qualifying mail. Its own suggestions, it says, involve "bilateral" contracting. However, Advo's second proposal appears to qualify this distinction in that a rate and service arrangement, once sanctioned by the Commission, would be generally available on demand—i.e., on the same "unilateral contract" basis as the present subclasses defined in the *Domestic Mail Classification Schedule*.

We are persuaded that this circumstance substantially undercuts the arguments in favor of substituting a contractual regime for the present system of classifications and fixed rates. That it has been seriously made, however, does suggest that the implementation of the present system may be insufficiently flexible. TCMA argues that a certain amount of informal modification and adjustment of services is done even today, when there is no price differential reflecting it.²⁰ When a particular modification—particularly in the form of worksharing—becomes or is expected to become sufficiently widespread, we create a new classification (rate category) to reflect the savings. But it is still broadly true that, even for classes where fairly elaborate operations on the part of the

mailer as well as the Postal Service are the rule, the system assumes that subclasses are defined, "end-to-end" services purchased as a unit by the mailer.

TCMA has suggested that this approach may be due for reconsideration. Without necessarily endorsing the idea that classes of mail are merely collections of successive, or distinguishable, functional operations that could just as well be sold piecemeal, we recognize that both the willingness and the capacity of mailers to perform some of these operations for themselves has increased over the years.²¹ It may therefore be time to consider whether the presumption that a subclass of mail is a unit, which may be sold at different prices if there is enough evidence of worksharing arrangements yielding quantifiable savings to the seller, should be reassessed by comparing it to a potential alternative approach that (i) identifies manageable subunits, operationally defined, and (ii) presumes that these subunits will be available separately at individually tariffed prices.

Further Steps

Accordingly, we have decided to request comments from those interested—whether or not they have previously filed comments in this docket—on several broad issues:

1. Would it be desirable to reorient mail classification to deemphasize the unitary character of at least some classes or subclasses, and treat them more as groupings of separable operational functions? What would be the advantages of such a reorientation? Its disadvantages?

2. To what extent, and for what reasons, would a reorientation as described in (1)—

a. Promote, or interfere with, the broad policies of the Postal Reorganization Act?

b. Be consistent, or inconsistent, with specific mandates of the Act?

c. Assist, or interfere with, the regulatory program embodied in ch. 36 of the Act?

d. Affect nonpostal sectors of society or of the economy, in either beneficial or harmful ways?

3. What, if any, alternative approaches (other than the contract rate mechanisms discussed in the petition

²⁰ Of course in many instances none would be expected. We have frequently recommended classification provisions that define eligible mail as being prepared or tendered as "prescribed by the Postal Service" (see, e.g., *DMCS 300.023*). Since rates attach to classes, not to pieces or mailings (see *PRC Op. C85-1*, paras. 024-025), one would not expect to see a price adjustment asked or offered where variations are called for in characteristics the DMCS commits to Postal Service discretion.

²¹ For one thing, access to cheap computing power, a relatively recent phenomenon, has made the handling of great volumes of operational information feasible for mailers or their service companies as well as for the Service.

and the initial comments) might be advantageously considered?

4. Assuming *arguendo* that in an appreciable number of situations the reorientation described above could be beneficial, is a *general* policy required? Or is the existing, case-by-case, mail classification process adequate to the task?

Of course, comments may address any other question or topic reasonably related to the broad inquiry we have posed.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 89-26550 Filed 11-9-89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 52, 63, and 61

[CGD 88-057]

RIN 2115-AD11

Automatic Auxiliary Boilers

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to revise the requirements for automatic auxiliary boilers contained in 46 CFR part 63. The scope and applicability of part 63 will be clarified to minimize confusion, and industry consensus standards will replace existing regulations where these standards provide an equivalent level of safety when compared with the existing requirements. Also, a specific safety provision will be added to reduce the possibility of an explosion during the postpurge cycle. The end result of implementing this proposed rulemaking will be a reduction in costs and time delays for the approval process without compromising safety.

DATE: Comments must be submitted on or before February 12, 1990.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3600)/(CGD 88-057), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001. Comments may be delivered to, and are available for inspection and copying at, the Marine Safety Council, U.S. Coast Guard, Room 3600, 2100 Second Street, SW., Washington, DC, between 8 a.m. and 3 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randall N. Crenwelge, Office of

Marine Safety, Security, and Environmental Protection; Marine Technical and Hazardous Materials Division, Room 1218, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-2206. Normal office hours are from 7:30 a.m. until 4:00 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this rulemaking procedure by submitting written comments, data, or arguments. Each comment should include the name and address of the person submitting the comment, identify this notice (CGD 88-057), the specific section of the proposal to which the comment applies, and the reason for the comment. No public hearing is anticipated at this time, however, one may be held if written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will benefit the rulemaking process. All comments will be reviewed and considered by the Coast Guard before taking further rulemaking action.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Drafting Information

The principal persons involved in drafting this proposal are Mr. Randall N. Crenwelge, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Discussion of Proposed Regulations

a. Background

In 1965, the Coast Guard recognized the need to develop guidance for plan review of merchant vessels having centralized control systems and automatic boilers. A series of Navigation and Vessel Inspection Circulars (NVICs) were issued to express policy and provide guidance for field inspection offices. These NVICs were used to ensure a general level of safety for automatic auxiliary boilers at least equal to that required for manually operated auxiliary boilers.

Prior to 1968, only automatic steam boilers operating at pressures exceeding 30 pounds per square inch and used for purposes other than propulsion were covered by regulations under 46 CFR 162.026. In 1968, new marine engineering

requirements were codified. These regulations were included in 46 CFR parts 50 through 63. Specific industrial codes, standards, and specifications were incorporated by reference for the design, construction, fabrication, operation, maintenance, and repair of boilers, pressure vessels, pressure piping, and propelling and auxiliary machinery. Codes, standards, and specifications which are incorporated by reference have the same force and effect as other U.S. Coast Guard regulations.

For automatic auxiliary boilers, an industry standard was not available that the Coast Guard considered suitable for incorporation into the regulations. Portions of part 63 were derived from the experience the Coast Guard had gained from implementing the NVICs and Part 162.026; however, most of part 63 was developed to express new requirements.

Since the publication of the marine engineering regulations in 1968, the American Society of Mechanical Engineers (ASME) has developed and published a standard, "Controls and Safety Devices for Automatically Fired Boilers" which has been adopted by the American National Standards Institute (ANSI). This standard has also been adopted into law by many federal and state regulatory agencies. The Coast Guard has reviewed this document and concluded that it contains many provisions which are suitable for incorporation into the proposed regulations. These should be included along with design parameters which are unique to the marine environment. This regulatory project has been initiated to accomplish these goals.

b. Issues Addressed

(1) *Scope and applicability.* The scope of part 63 should be clarified. Presently, automatic auxiliary boilers are divided into three broad categories which are large automatic auxiliary boilers, small automatic auxiliary boilers, and electric storage tank hot water supply boilers. It is not presently clear from the language of Part 63 which types of boilers and heating equipment fall within the scope of the existing categories. Although not stated in the present regulations, boilers should be classified by their service, control systems, pressure and temperature boundaries, heat input ratings, and firing medium. The services of automatic auxiliary boilers are clearly defined. Those control systems and automatic boilers which are governed by other parts and sections of the regulations are specified. Therefore, boilers governed by Part 63 should include large and small auxiliary

boilers, automatic heating boilers, automatic waste heat boilers, donkey boilers, miniature boilers, electric boilers, electric hot water supply boilers, auxiliary unit heaters, automatic incinerators, and fired thermal fluid heaters. However, only automatic auxiliary boilers having firing rates of less than 12,500,000 Btu/hr. will be covered by this proposed rule. Power boilers and auxiliary boilers having firing rates of 12,500,000 Btu/hr. and above must meet the requirements of Part 52, and their control systems must meet the requirements of Part 62. New sections will be added for incinerators and exhaust gas boilers. The Coast Guard is expecting a large influx of incinerator approval requests due to the adoption of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78 Annex V, Garbage Disposal Restrictions).

(2) *Safety.* In accordance with section 63.05-25(b)(3) of the existing regulations, an auxiliary boiler's control system must ensure that the length of the postpurge period is at least 15 seconds after the fuel valve is closed. The postpurge period should automatically occur when a boiler is being secured; however, when an emergency trip occurs, the air flow to the boiler should not automatically increase. In 1983, an auxiliary boiler explosion occurred on the SS PRESIDENT LINCOLN. A Coast Guard investigation determined that after repeated attempts to light off, during the automatic postpurge cycle, an increase in air flow occurred creating an explosive atmosphere. The National Fire Protection Association (NFPA) Standard for the Prevention of Furnace Explosions in Fuel Oil Fired Multiple Burner Boiler Furnaces, NFPA 85D, Chapter 5-2.5.3, requires postpurge in such cases to be under manual control. The proposed regulations will incorporate this provision.

(3) *Adoption of Industry Consensus Standards.* An industry consensus standard, "Controls and Safety Devices for Automatically-Fired Boilers", ANSI/ASME CSD-1-1982/CSD-1a-1984, has been developed by an American Society of Mechanical Engineers (ASME) committee composed of independent product certification agencies, insurance companies, control system manufacturers, industry associations, and other regulatory agencies, and has been adopted by ANSI. This standard covers automatic control system design, construction, installation, certification, and testing. It contains a self-certification procedure which is

performed by the manufacturer, and it is currently used by industry and other regulatory agencies. The Coast Guard proposes to adopt this industry standard and eliminate the burden of detailed plan review and component inspections. In the proposed rule, certification by the manufacturer that the automatic auxiliary boiler and its control systems meet the requirements of part 63 will indicate compliance with the regulations.

c. Discussion of Proposed Regulations

Section 52.01-10 Automatic controls. Paragraph (b) is revised and paragraph (c) is added to specify which particular parts of the regulations apply to an auxiliary boiler based on its heat input ratings. Part 63 applies to boilers having heat input ratings less than 12,500,000 Btu/hr. This limit is specified in ANSI/ASME CSD-1-1982/CSD-1a-1984 as the maximum cutoff point for which this standard applies. Controls and safety devices for boilers with fuel input ratings of 12,500,000 Btu/hr. or above fall within the scope of part 62.

Section 52.01-135 Inspection and tests. Paragraph (d) is revised to reflect that the requirements of the current §§ 63.05-90 and 63.10-90 are removed from part 63 and placed in part 61.

Section 52.25-15 Fired Thermal Fluid Heaters. Paragraph (d) is added to this section to cross-reference the test and inspection requirements found in subpart 61.30.

Section 52.25-20 Exhaust Gas Boilers. This section is revised to cross-reference the requirements for automatic exhaust gas boiler control systems found in § 63.25-7 and subpart 61.35.

Section 61.30-20 Automatic control and safety tests. In this section, the requirement for the tests to be conducted in accordance with the procedures in the heater instruction booklet has been removed. Also, the requirement to submit a test procedure for approval to the Officer in Charge, Marine Inspection has been removed. The new regulations do not require the submittal of instruction booklets for approval.

Subpart 61.35—Design Verification and Periodic Testing for Automatic Auxiliary Boilers. This subpart is added to cross-reference test and inspection requirements for automatic auxiliary boilers. The test and inspection requirements currently found in §§ 63.05-90 and 63.10-90 are moved to this subpart so that all test and inspection requirements for boilers, pressure vessels, fired thermal fluid heaters, machinery, and piping systems are located in one subpart. Test and inspection requirements for automatic

auxiliary boilers are also revised to be consistent with those for main power boilers without being overly burdensome.

Part 63—Automatic Auxiliary Boilers. The Coast Guard proposes to revise the whole of part 63. A discussion of each subpart, as revised, follows.

Subpart 63.01—General Provisions. This subpart is revised to state the purpose, scope, and applicability (including exceptions) of part 63. Automatic auxiliary boilers are classified by their service, control systems, pressure and temperature boundaries, heat input ratings, and firing medium. The types of automatic auxiliary boilers covered by this part and those control systems and automatic boilers which are governed by other parts and sections of the regulations are specified. This proposed subpart differs from the existing regulations in that it establishes design criteria based on a particular boiler's service, control systems, pressure and temperature boundaries, heat input ratings, and the firing medium. This additional information is provided for convenience, clarification, and ease of interpretation of the regulations.

Subpart 63.05—Reference Specifications. This subpart is revised by listing standards accepted by the Coast Guard as meeting the safety requirements for automatic auxiliary boiler controls and components. Since the 1st revision to part 63, industry standards have been developed which cover automatic boiler control system design, operation, and testing. The provisions in these standards provide an equivalent level of safety when compared with the existing regulations. The standards listed in this subpart already have been adopted by other state and federal regulatory agencies.

Subpart 63.10—Miscellaneous Submittals. This subpart is revised by eliminating the requirements to submit equipment descriptions, detailed plans, schematics, logic diagrams, bills of materials, and operating instructions. Plans will no longer be approved; however, the submittal of test procedures will still be required. A requirement for the manufacturer to submit a certification report in accordance with ANSI/ASME CSD-1-1982/CSD-1a-1984 has been added. This will allow the manufacturer to certify an automatic auxiliary boiler as complying with the provisions of this part and the referenced industry consensus standards.

Subpart 63.15—General Requirements. This subpart is revised by referencing construction

requirements for automatic auxiliary boilers, their accessories, and marine environmental design parameters which are required for safe operation. Tests and inspection requirements for automatic auxiliary boilers found in part 61 are cross-referenced.

Subpart 63.20—Additional Control System Requirements. This subpart is added to consolidate the requirements for the programming control system, operating control system, flame safeguard control system, limit control system, combustion control system, ignition system, water level controls, and low water cut off controls found in ANSI/ASME CSD-1-1982/CSD-1a-1984 and the existing regulation. The unique marine requirements found in the existing regulations have been retained. The procedure for purging after an emergency trip has been added to reduce the possibility of furnace explosions.

Subpart 63.25—Requirements for Specific Types of Automatic Auxiliary Boilers. This subpart is added to specify requirements which are unique to small auxiliary boilers (firing rates of 3 gallons per hour (gph) or less), electric hot water supply boilers, fired thermal fluid heaters, exhaust gas boilers, and incinerators. The requirements in this subpart apply to the above listed boilers in addition to the requirements found in other subparts which apply to all automatic auxiliary boilers.

Reference Tables. Table 1 is provided for convenience when comparing the proposed regulations with existing regulations. It lists the proposed regulations, and the corresponding existing provisions in title 46 of the Code of Federal Regulations and industry consensus standards.

TABLE 1

Proposed regulation	Reference
§ 52.01-10(b).....	ANSI/ASME CSD-1-1982/CSD-1a-1984.
§ 52.01-10(c).....	Part 62, ANSI/ASME CSD-1-1982/CSD-1a-1984.
§ 52.01-135(d).....	§ 52.01-135(d), § 61.30-20, § 63.05-90, § 63.10-90, § 63.15-40, § 61.01, § 61.05.
§ 52.25-15.....	§ 61.30.
§ 52.25-20.....	§ 52.25-20, § 61.30.
§ 61.30-20.....	§ 61.30-20.
§ 61.35-1.....	§ 61.30.
§ 61.35-3.....	§ 63.05-90, § 63.10-90, § 63.15-40.
§ 63.01-1.....	§ 63.01-1.
§ 63.01-3.....	§ 63.01-1(b), Table § 54.01-5(a).
§ 63.05-1.....	§ 63.01-5, 1 CFR part 51.

TABLE 1—Continued

Proposed regulation	Reference
§ 63.10.....	§ 63.05-5, § 63.10-5, § 63.05-95.
§ 63.15-1.....	§ 63.05-15, § 63.05-20, ANSI/ASME CSD-1/CSD-1a, § 63.10-15, § 63.10-20, § 56.60-65, Table § 54.01-5(a), Solas 74/83-II-1 Regs 32 & 33, NFPA 70.
§ 63.15-3.....	§ 63.05-65, § 63.10-65, § 63.05-75, § 63.10-75, § 56.50-65, § 56.60, § 56.04-2, ANSI/UL 343.
§ 63.15-5.....	§ 63.05-70, § 63.10-70, § 56.50-5, § 56.50-65, ANSI/UL 296.
§ 63.15-7.....	§ 63.05-80, § 63.10-80.
§ 63.15-9.....	§ 61.35, § 63.05-90, § 63.10-90.
§ 63.20.....	§ 63.05-25, NFPA 85D, § 63.05-30, § 63.10-30, § 63.05-35, § 63.10-35, § 63.05-40, § 63.10-40, § 63.05-45, § 63.10-45, § 63.05-50, § 63.10-50, § 63.05-55, § 63.10-55, § 63.05-60, § 63.10-60.
§ 63.25-1.....	§ 63.10.
§ 63.25-3.....	§ 63.15, ANSI/UL 174, ANSI/UL 1453.
§ 63.25-5.....	§ 63.05-40 (d) & (e), § 63.10-40 (c) & (d).
§ 63.25-7.....	New.
§ 63.25-9.....	New.

Regulatory Evaluation

The proposed regulations are considered to be nonmajor under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations is expected to be minimal. Since the impact of this rulemaking is expected to be minimal, the Coast Guard certifies that this rulemaking, if adopted, would not have a significant economic impact on a substantial number of small entities. The public is specifically invited to comment on the expected cost to implement these regulations, if adopted.

Paperwork Reduction Act

This proposed rulemaking contains information collection and record-keeping requirements in § 63.10-1. They have been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 USC 3501 *et seq.*). Persons desiring to comment on these recordkeeping and information collection requirements should submit their comments to: Office

of Regulations Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under "ADDRESSES".

Environmental Impact

The Coast Guard has considered the environmental impact of the proposed regulations, and in accordance with section 2.B.2. of Commandant Instruction M16475.1B, has determined that this rulemaking is categorically excluded from further environmental documentation.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

46 CFR Part 52

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 61

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 63

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

In consideration of the foregoing, chapter I of title 46, Code of Federal Regulations is proposed to be amended as follows.

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. Section 52.01-10 is amended by revising paragraph (b) and adding new paragraph (c) to read as follows:

§ 52.01-10 Automatic controls.

(b) Each automatically controlled auxiliary boiler having a heat input rating of less than 12,500,000 Btu/hr. (3.66 megawatts) must meet the requirements of part 63 of this chapter.

(c) Each automatically controlled auxiliary boiler with a heat input rating of 12,500,000 Btu/hr. (3.66 megawatts) or above, must meet the requirements for automatic safety controls in part 62 of this chapter.

3. Section 52.01-135 is amended by revising paragraph (d) to read as follows:

§ 52.01-135 Inspection and tests (modifies PG-90 through PG-100).

(d) *Operating tests.* In addition to the hydrostatic tests prescribed in paragraph (c) of this section, automatically controlled auxiliary boilers must be subjected to operating tests as specified in §§ 61.30-20, 61.35-1, 61.35-3, 63.15-9, 63.25-3, and 63.25-5 of this chapter, as appropriate, or as directed by the Officer in Charge, Marine Inspection, for propulsion boilers. These tests are to be performed after final installation.

4. Section 52.25-15 is amended by adding new paragraph (d) to read as follows:

§ 52.25-15 Fired thermal fluid heaters.

(d) Each fired thermal fluid heater must be tested and inspected in accordance with the requirements of subpart 61.30 of this chapter.

5. Section 52.25-20 is revised to read as follows:

§ 52.25-20 Exhaust gas boilers

Exhaust gas boilers with a maximum allowable working pressure greater than 103 kPa gage (15 psig) or an operating temperature greater than 454° C. (850° F.) must be designed, constructed, inspected, tested and stamped in accordance with the applicable provisions in this part. The design temperature of parts exposed to the exhaust gas must be the maximum temperature that could normally be produced by the source of the exhaust gas. This temperature must be verified by testing or by the manufacturer of the engine or other equipment producing the exhaust. Automatic exhaust gas boiler control systems must be designed, constructed, tested, and inspected in accordance with § 63.25-7 of this chapter.

PART 61—[AMENDED]

6. The authority citation for Part 61 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58601, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

7. Section 61.30-20 is revised to read as follows:

§ 61.30-20 Automatic control and safety tests.

Operational tests and checks of all safety and limit controls, combustion controls, programming controls and safety relief valves must be conducted by the owner, chief engineer, or person in charge at the inspection for certification, and when directed by the Officer in Charge, Marine Inspection, to determine that the control components and safety devices are functioning properly and are in satisfactory operating condition. These tests and checks must be conducted in the presence of a marine inspector. They must include the following: proper prepurge, burner ignition sequence checks, operation of the combustion controls, limit controls, fluid flow controls, fluid level controls, high temperature control, proper postpurge control, and verification of the flame safeguard.

8. Subpart 61.35 is added to read as follows:

Subpart 61.35—Design Verification and Periodic Testing for Automatic Auxiliary Boilers

Sec.

61.35-1—General.

61.35-3—Required tests and checks.

Subpart 61.35—Design Verification and Periodic Testing for Automatic Auxiliary Boilers

§ 61.35-1 General.

(a) All automatic auxiliary boilers except fired thermal fluid heaters must be tested and inspected in accordance with this subpart and subpart 61.05 of this part.

(b) Fired thermal fluid heaters must be tested and inspected in accordance with subpart 61.30 of this part.

(c) All controls, safety devices, and other control system equipment must be tested and inspected to verify their proper design, construction, installation, and operation.

(d) All tests must be performed after installation of the automatic auxiliary boiler and its control system(s) aboard the vessel.

(e) As far as practicable, test techniques must not simulate monitored system conditions by misadjustment, artificial signals, improper wiring, tampering, or revision of the system tested. The use of a synthesized signal or condition applied to a sensor is acceptable if the required test equipment is maintained in good working order and is periodically calibrated. Proper operation and proper calibration of test equipment must be demonstrated to the Officer in Charge, Marine Inspection.

§ 61.35-3 Required tests and checks.

(a) Tests and checks must include the following:

(1) *Safety (Programming) controls.* Safety controls must control and cycle the unit in the proper manner and sequence. Proper prepurge, ignition, postpurge, and modulation must be verified. All time intervals must be verified.

(2) *Flame safeguard.* The flame safeguard system must be tested by causing flame and ignition failures. Operation of the audible alarm and visible indicator must be verified. The shutdown times must be verified.

(3) *Fuel supply controls.* Satisfactory shutdown operation of the two fuel control solenoid valves must be verified.

(4) *Fuel oil pressure limit control.* A safety shutdown must be initiated by lowering the fuel oil pressure below the value required for safe combustion. System shutdown and the need for manual reset prior to automatic startup must be verified.

(5) *Fuel oil temperature limit control.* (Units designed to burn heavy fuel oil). A safety shutdown must be initiated by lowering the fuel oil temperature below the designed temperature. System shutdown and the need for manual reset prior to automatic startup must be verified.

(6) *Combustion controls.* Smooth and stable operation of the combustion controls must be verified.

(7) *Draft limit control.* The draft loss interlock switch must be tested by stopping the blower motor or blocking the draft opening. The draft limit control must cause burner shutdown and prevent startup when an inadequate air volume is supplied to the burner(s).

(8) *Limit controls.* Shutdown caused by the limit controls must be verified.

(9) *Water level controls.* Water level controls must be tested by slowly lowering the water level in the boiler. Each operating water level control must be individually tested. The upper low water cutoff and the lower low water cutoff must each be tested. The audible alarm and visible indicator associated with the lower low water cutoff must be tested. The manual reset device must be tested after the lower low water cutoff has been activated.

(10) *Feed water flow controls.* The feed water flow limit device (found in steam boilers and water heaters without water level controls) must be tested by interrupting the feed water supply. Manual reset must be required prior to restarting the boiler.

(11) *Low voltage test.* The fuel supply to the burners must automatically shut off when the supply voltage is lowered.

(12) *Switches*. All switches must be tested to verify satisfactory operation.
9. Part 63 is revised to read as follows:

PART 63—AUTOMATIC AUXILIARY BOILERS

Subpart 63.01—General Provisions

Sec.

- 63.01-1 Purpose.
63.01-3 Scope and applicability.

Subpart 63.05—Reference Specifications

- 63.05-1 Incorporation by Reference.

Subpart 63.10—Miscellaneous Submittals

- 63.10-1 Test Procedures and Certification Report.

Subpart 63.15—General Requirements

- 63.15-1 General.
63.15-3 Fuel System.
63.15-5 Strainers.
63.15-7 Alarms.
63.15-9 Inspections and Tests.

Subpart 63.20—Additional Control System Requirements

- 63.20-1 Specific control system requirements.

Subpart 63.25—Requirements for Specific Types of Auxiliary Boilers

- 63.25-1 Small Automatic Auxiliary Boilers.
63.25-3 Electric Hot Water Supply Boilers.
63.25-5 Fired Thermal Fluid Heaters.
63.25-7 Exhaust Gas Boilers.
63.25-9 Incinerators.

Authority: 46 U.S.C. 3306, 3703, E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 63—AUTOMATIC AUXILIARY BOILERS

Subpart 63.01—General Provisions

§ 63.01-1 Purpose.

This part specifies the minimum requirements for safety for each automatic auxiliary boiler, including its design, construction, testing and operation.

§ 63.01-3 Scope and applicability.

(a) This part contains the requirements for automatic auxiliary boilers, including their controls, control system components, electrical devices, safety devices, and accessories. Types of automatic auxiliary boilers which are covered include large and small automatic auxiliary boilers, automatic heating boilers, automatic waste heat boilers, donkey boilers, miniature boilers, electric boilers, fired thermal fluid heaters, automatic incinerators, and electric hot water supply boilers. Automatic auxiliary boilers are classified by their service, control

systems, pressure and temperature boundaries, heat input ratings, and firing mediums as follows:

(1) Automatic auxiliary boilers listed in Table 54.01-5(A) of this chapter which reference this part for regulation of their automatic controls.

(2) Automatic control systems for automatic auxiliary boilers having a heat input rating of less than 12,500,000 Btu/hr. (3.66 megawatts) (20 gph).

(3) Electric hot water supply boilers (heaters) containing electric heating elements rated at 600 volts or less.

(4) Exhaust gas boilers, and their controls and accessories used to heat water and/or generate steam.

(5) Incinerators (and their control systems) used for the generation of steam and/or oxidation or ordinary waste materials and garbage. This part also includes incinerators which serve as automatic auxiliary boilers.

(b) *Exceptions*. Automatic boilers have heat input ratings of 12,500,000 Btu/hr. (3.66 megawatts) (20 gph) and above must meet the requirements of part 52 of this chapter. Their control systems must meet the requirements of part 62 of this chapter. Electric cooking equipment must comply with § 111.77-3 of this chapter. Electric oil immersion heaters must comply with subpart 111.85 of this chapter. Electric air heating equipment must comply with subpart 111.87 of this chapter.

Subpart 63.05—Reference Specifications

§ 63.05-1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the Federal Register and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH-2), 2100 Second Street, SW., Washington, DC 20593-0001, and is available from the source listed in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society of Mechanical Engineers:

345 East 47th St., New York, NY 10017
ANSI/ASME CSD-1-1982 with Addenda CSD-la-1984, Controls and Safety Devices for Automatically Fired Boilers, Nov. 15, 1984....

63.10-1;
63.15-1;
63.20

Underwriters' Laboratories, Inc. (UL):

333 Pfingsten Road, Northbrook, IL 60062

ANSI/UL-174, Standard for Household Electric Storage Tank Water Heaters, Seventh Edition, Apr. 18, 1983 (Revisions through March 1988).....

63.25-3

ANSI/UL-296, Standard for Oil Burners, Seventh Edition, Aug. 22, 1980 (Revisions through Aug. 1985).....

63.15-5

ANSI/UL-343, Standard for Pumps for Oil Burning Appliances, Sixth Edition, July 17, 1986.....

63.15-3

ANSI/UL-1453, Standard for Electric Booster and Commercial Storage Tank Water Heaters, Third Edition, Feb. 5, 1988.....

63.25-3

American Gas Association:

1515 Wilson Blvd., Arlington, VA 22209

ANSI/AGA Z21.22-86 Relief Valves and Automatic Shut off Devices for Hot Water Supply Systems, Mar. 28, 1986.....

63.25-3

Subpart 63.10—Miscellaneous Submittals

§ 63.10-1 Test procedures and certification report.

(a) Two (2) copies of the following items must be submitted to the Commanding Officer, U.S. Coast Guard Marine Safety Center, 400 Seventh Street, SW., Washington, DC 20590-0001.

(1) Detailed instructions for operationally testing each automatic auxiliary boiler, its controls, and safety devices.

(2) A certification report for each automatic auxiliary boiler which:

(i) Meets paragraph CG-510 of ANSI/ASME CSD-1/CSD-la; and

(ii) Certifies that each automatic auxiliary boiler, its controls, and safety devices comply with the additional requirements of this part.

Subpart 63.15—General Requirements**§ 63.15-1 General.**

(a) Each automatic auxiliary boiler must be designed and constructed for its intended service according to the requirements of the parts referenced in Table 54.01-5(A) of this chapter.

(b) Controls and safety devices for automatic auxiliary boilers must meet the applicable requirements of ANSI/ASME CSD-1/CSD-1a, except Paragraph CG-310.

(c) All devices and components of an automatic auxiliary boiler must satisfactorily operate within the marine environment. The boiler must satisfactorily operate with a momentary roll of 30°, a list of 15°, and a permanent trim of 5° with it installed in a position as specified by the manufacturer.

(d) An electrical control used to shut down the automatic auxiliary boiler must be installed in accordance with § 58.01-25 of this chapter. This device must stop the fuel supply to the fuel burning equipment.

(e) Mercury tube actuated controls are prohibited from being installed and used on automatic auxiliary boilers.

§ 63.15-3 Fuel system.

(a) Firing of an automatic auxiliary boiler by natural gas is prohibited unless specifically approved by the Marine Safety Center.

(b) When heavy fuel oil is used, a thermostatically-controlled electric oil heater and a level device must be furnished in accordance with Subpart 111.85 of this chapter.

(c) The fuel oil service pump and its piping system must be designed in accordance with § 56.50-65 of this chapter. All materials must meet the requirements of subpart 56.60 of this chapter. The use of cast iron or malleable iron is prohibited.

(d) The fuel oil service system (including the pump) must meet the pressure classification and design criteria found in Table 56.04-2 of this chapter.

(e) When properly selected for the intended service, fuel pumps meeting the performance and test requirements of ANSI/UL 343 meet the requirements of this section.

§ 63.15-5 Strainers.

(a) Strainers must be installed in the fuel supply line. Each strainer must be self-cleaning, fitted with a bypass, or be capable of being cleaned without interrupting the fuel oil supply.

(b) The strainer must not allow a quantity of air to be trapped inside which would affect the rate of fuel flow

to the burner or reduce the effective area of the straining element.

(c) Strainers meeting the requirements for strainers found in ANSI/UL 296 meet the requirements of this section.

§ 63.15-7 Alarms.

(a) An audible alarm must automatically sound when a flame safety system shutdown occurs. A visible indicator must indicate that the shutdown was caused by the flame safety system.

(b) Means must be provided to silence the audible alarm. The visible indicators must require manual reset.

(c) For steam boilers, operation of the lower low water cutoff must automatically sound an audible alarm. A visual indicator must indicate that the shutdown was caused by low water.

§ 63.15-9 Inspections and tests.

(a) All automatic auxiliary boilers must be inspected and tested in accordance with the requirements of part 61 of this chapter.

Subpart 63.20—Additional Control System Requirements**§ 63.20-1 Specific systems requirements.**

In addition to the requirements found in ANSI/ASME CSD-1/CSD-1a, the following requirements apply for specific control systems:

(a) *Primary safety control system.* Following emergency safety trip control operation, the air flow to the boiler must not automatically increase. For this condition, postpurge must be accomplished manually.

(b) *Combustion control system.* A low fire interlock must ensure low fire start when variable firing rates are used.

(c) *Water level controls and low water cut off controls.* Water level controls must be constructed and located to minimize the effects of vessel roll and pitch. Float chamber low water cutoffs using stuffing boxes to transmit the motion of the float from the chamber to the external switches are prohibited. No outlet connection other than pressure controls, water columns, drains, and steam gages may be installed on the float chamber or on the pipes connecting the float chamber to the boiler. The water inlet valve must not feed water into the boiler through the float chamber. The boiler feed piping must comply with the applicable requirements of § 56.50-30 of this chapter.

Subpart 63.25—Requirements for Specific Types of Automatic Auxiliary Boilers**§ 63.25-1 Small automatic auxiliary boilers.**

(a) Small automatic auxiliary boilers, defined as having a heat input rating of 400,000 Btu/hr. and less (117 kilowatts and less) (3 gph and less), must meet the following additional requirements.

(1) Small automatic auxiliary boilers must be equipped with a visual indicator which indicates when the low water cutoff has activated.

(2) A prepurge period of a sufficient duration to ensure at least four changes of air in the combustion chamber and stack, but not less than 15 seconds must be provided. Ignition must occur only before or simultaneously with the opening of the fuel oil valve.

§ 63.25-3 Electric hot water supply boilers.

(a) Electric hot water supply boilers which have a capacity not greater than 454 liters (120 U.S. gallons), a heat input rate not greater than 200,000 Btu/hr. (58.6 kilowatts), meet the requirements of ANSI/UL 174 or ANSI/UL 1453, and are protected by a pressure relief device are not required to meet any other requirements of this section.

(b) Each hot water supply boiler must be constructed in accordance with the applicable requirements of part 52 or part 53 of this chapter.

(c) Branch circuit conductors for hot water supply boilers which have a capacity not greater than 454 liters (120 U.S. gallons) must have a current carrying capacity of not less than 125 percent of the current rating of the appliance. Branch circuit conductors for hot water supply boilers with capacities of more than 454 liters (120 U.S. gallons) must have a current carrying capacity not less than 100 percent of the current rating of the appliance. Wiring materials and methods must comply with subpart 111.60 of this chapter. A hot water supply boiler having a current rating of more than 48 amperes and employing resistance type heating elements must have the heating elements on subdivided circuits. Each subdivided load, except for an electric hot water supply boiler employing a resistance type immersion electric heating element, must not exceed 48 amperes, and it must be protected at not more than 60 amperes. An electric hot water supply boiler employing a resistance type immersion electric heating element may be subdivided into circuits not exceeding 120 amperes and protected at not more than 150 amperes. Overcurrent

protection devices must comply with subpart 111.50 of this chapter.

(d) Heating elements must be insulated electrically from the water being heated, guarded against mechanical injury and contact with outside objects, and securely supported. Consideration must be given to sagging, opening, and other adverse conditions of the elements resulting from continuous heating, and flexion of supports and wiring due to alternate heating and cooling. Wrap-around elements must be secured in a manner which prevents loosening.

(e) Iron and steel parts must be protected against corrosion by enameling, galvanizing, or plating. Iron and steel storage tanks having a wall thickness less than 1/4-inch (6.4 mm) must have the inside surface protected against corrosion.

(f) Each heating element must have a temperature regulating device. The device must limit the water from obtaining a temperature greater than 90° C. (194° F.). If the control has a marked off position, the control must disconnect the heating element from all ungrounded conductors, and it must not respond to temperature when placed in the off position.

(g) An independent temperature limiting device must prevent the water in the upper 25 percent of the tank from attaining a temperature higher than 99° C. (210° F.). This device must require manual resetting, be trip free from the operating means, open all ungrounded power supply conductors to the heater, and be readily accessible.

(h) Electric hot water supply boilers must have pressure and temperature relieving valves. The valve temperature setting must not be more than 99° C. (210° F.). The pressure relief setting must not be higher than the marked working pressure of the boiler. The pressure and temperature relief valves must meet subpart 53.05 of this chapter. The pressure and temperature relief valves may be combined into a pressure-temperature relief valve. When combined, the valve must meet the requirements of ANSI/AGA Z21.22 in lieu of subpart 53.05 of this chapter.

(i) Electric hot water supply boilers must be marked in a visible location with the manufacturer's name, model or other identification number, water capacity, and the electrical ratings of each heating element. When two or more heating elements are installed, the maximum wattage or current consumption must be indicated. The cold water inlet and the hot water outlet must each be clearly distinguished or marked for identification purposes.

(j) All electric hot water supply boilers must have their pressure relief devices tested as required by part 52 or part 53 of this chapter, as applicable. Electric hot water supply boilers which meet the requirements of ANSI/UL 174 or ANSI/UL 1453 and have heating elements, temperature regulating controls, and temperature limiting controls are satisfactory for installation and service without further testing. All electric hot water supply boilers not meeting the requirements of ANSI/UL 174 or ANSI/UL 1453 must have their heating elements, temperature regulating controls, and temperature limiting controls tested by the marine inspector.

§ 63.25-5 Fired thermal fluid heaters.

(a) *Construction.* Fired thermal fluid heaters must meet the requirements of Part 52 of this chapter, as applicable.

(b) *Controls.* Fired Thermal Fluid heaters must have a low fluid level cutoff device or a low flow device. When the rate of fluid flow through the heating coils is insufficient to ensure proper heat transfer, the device must cut off the fuel supply to the burner. If the fluid temperature exceeds the designed maximum operating temperature, a high temperature limit device must cut off the fuel supply to the burner. These devices must be of the manual reset type.

§ 63.25-7 Exhaust gas boilers.

(a) *Construction.* An auxiliary exhaust gas boiler must meet the applicable construction requirements of part 52 or part 53 of this chapter as determined from Table 54.01-5(A) of this chapter.

(b) *Controls.* Each drum type exhaust gas steam boiler must have a feed water control system. The system must automatically supply the required amount of feed water and maintain it at the proper level. For boilers without a fixed water level, the control system must supply the feed water at a rate sufficient to ensure proper heat transfer. The system must adequately fill the boiler when cold.

(c) *Alarms.* When a condition arises which results in inadequate heat transfer, a high temperature alarm or low flow alarm must be activated. An audible alarm must automatically sound, and a visual indicator must indicate when the fluid temperature exceeds the maximum operating temperature or when the fluid/steam flowing through the heat exchanger is insufficient to ensure proper heat transfer.

§ 63.25-9 Incinerators.

(a) *Construction.* Incinerators which produce hot water or generate steam must meet the requirements of part 52 or part 53 of this chapter, as applicable.

(b) A high temperature limit device must be installed in the combustion chamber and flue gas duct of the incinerator. Each limit device must be of the manual reset type and cause an automatic shutdown when a temperature higher than the maximum operating temperature is detected.

Dated: October 16, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief,
Office of Marine Safety, Security and
Environmental Protection.

[FR Doc. 89-26371 Filed 11-9-89; 8:45 am]

BILLING CODE 4910-14-M

46 CFR Part 164

[CGD 84-068]

RIN 2115-AB70

Personal Flotation Device (PFD) Components

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes procedures for obtaining Coast Guard acceptance of non-standard components, self-certification requirements for standards components, and production quality control requirements for all components used in the manufacture of Coast Guard approved personal flotation devices (PFD's). This notice also proposes to prohibit the use of cotton thread as a PFD component, designate specified nylon and polyester threads as standard components, and add new performance requirements for non-standard thread. Industry-wide conversion to the use of non-standard PFD components made of synthetic materials has caused a substantial backlog in Coast Guard review and acceptance of non-standard components. Also, a significant number of failures of non-standard components have been observed in random production testing. The purpose of these rules, as proposed, would be to reduce the time and effort involved to obtain Coast Guard acceptance of non-standard PFD components, and to reduce the number of failures observed in random testing of these components. The proposed regulations in this NPRM relating to standard PFD components and to certain non-standard PFD components essentially represent a codification of longstanding procedures and requirements that are currently applied to those components.

DATES: Comments must be submitted on or before January 12, 1990.

ADDRESSES: 1. Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/36), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC, 20593-0001. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council (G-LRA-2/36), Room 3600, U.S. Coast Guard, 2100 Second Street SW., Washington, DC, between the hours of 8 a.m. and 4 p.m. Monday through Friday, except holidays.

2. A draft Regulatory Evaluation has been included in the public docket for this rulemaking, and may be inspected and copied at the Marine Safety Council (G-LRA/36) at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Kurt J. Heinz, Office of Marine Safety, Security, and Environmental Protection (G-MVI-3), Room 1404, U.S. Coast Guard Headquarters, Washington, DC 20593-0001, (202)-267-1444.

SUPPLEMENTARY INFORMATION:

1. Request for Comments

Interested persons are invited and encouraged to participate in this proposed rulemaking (NPRM) by submitting written views, data, or arguments. Comments should include the names and addresses of the persons making them, identify this NPRM (CGD 84-068) and the specific section or paragraph of the NPRM to which each comment applies, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if a written request for a hearing is received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

2. Drafting Information

The principal persons involved in drafting this proposal are Kurt J. Heinz, Project Manager, Office of Marine Safety, Security, and Environmental Protection and William R. Register, Project Counsel, Office of the Chief Counsel.

3. RIN Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number

contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

4. Discussion of the Proposed Regulations

Background—Quality Control for Non-standard Components

Each of the existing PFD subparts in 46 CFR, Part 160 contains a section or sections containing requirements for the materials (generally referred to as components) used in the construction of the PFD concerned. Components which comply exactly with all of the requirements of one of these sections are commonly referred to as standard components. Standard components currently include such items as cotton fabric and webbing, cotton and synthetic threads, and metal closure hardware. Existing regulations in Part 160 require component manufacturers to provide affidavits (the content of which is not currently defined in the regulations) as certification that the components they provide comply with all applicable requirements, and they require PFD manufacturers to retain these affidavits as records.

Quality control requirements for standards components are not specifically defined in regulation, although in most cases, standard components must comply with military or federal specifications which do contain detailed quality control provisions. The quality control requirements in Part 160 are geared toward the end product, or PFD, and require periodic visits to the PFD manufacturing plant by marine inspectors; periodic inspection of specific PFD components in production is not required. Because concisely defined standard components were used almost exclusively in PFD manufacture at the time the existing regulations in part 160 became effective, visual inspections of PFD's in production were considered adequate to assure quality control of both components and the end product.

In the ensuing decades, however, many new materials and technologies were developed which demonstrated potential for equivalent or improved performance at similar or lower cost when properly used. Since the 1970's the Coast Guard has evaluated these materials (such as synthetic fabrics in place of cotton, and plastic buckles in place of metal closure hardware) on an individual basis for suitability as PFD components. Components demonstrated to be equivalent in performance to standard components are commonly referred to as "non-standard

components", and are accepted by the Coast Guard for use in PFD's as if they were standard components. Non-standard components are now in extensive use.

Individual performance testing of non-standard components, which was established in the 1970's as non-standard components first came into usage, was intended to control and monitor the quality of materials for which there originally was little field service history. Because there was little or no practical experience with entire generic categories of non-standard components (e.g., nylon fabrics), each prospective non-standard component had to be evaluated for equivalence individually rather than based upon known characteristics of a large group of similar products.

There are currently two methods in use by the Coast Guard for demonstrating equivalence and obtaining acceptance as a non-standard component: the Coast Guard "letter of acceptance", and component "recognition" by a recognized laboratory. The choice of which method to use lies with the component manufacturer. (Currently, Underwriters Laboratories is the only recognized laboratory, and the UL Recognition program is the only accepted component recognition program. Guidelines for acceptance of other laboratories and programs are included in these proposed rules. For convenience in this discussion, "recognition" will be used to refer to any accepted recognized laboratory program of initial product testing and subsequent oversight of quality control during production.)

To obtain a Coast Guard letter of acceptance for a non-standard component, the component manufacturer submits data directly to the Coast Guard (in the form of test results, samples, etc.) demonstrating that the component meets the appropriate equivalence requirements. The Coast Guard, after reviewing the application, then issues the letter of acceptance which establishes the conditions and restrictions under which the component is acceptable for use in approved PFD's. A Coast Guard letter of acceptance is valid for a period of five years (the same as for Coast Guard approval of PFD's and other materials and equipment), after which the manufacturer must resubmit performance data and product specifications as for a new acceptance. As for standard components, a condition of each Coast Guard letter of acceptance is that the component manufacturer must provide an affidavit

with each shipment, which references the letter of acceptance and which certifies that the components shipped meet all of the conditions of the acceptance and all of the applicable performance requirements. Each letter of acceptance also indicates that the acceptance is contingent upon the component manufacturer maintaining a quality control program sufficient to substantiate the required affidavits. This required quality control program is not more specifically defined.

The other method of obtaining acceptance as a non-standard component, component recognition by a recognized laboratory, is handled directly by the recognized laboratory. The component manufacturer submits samples of the prospective non-standard component to the recognized laboratory for testing against performance requirements similar to those used in evaluating components for which a Coast Guard letter of acceptance is requested. The recognized laboratory then prepares a test report and draft procedures for production inspections of the component, which are submitted to the Coast Guard for review. The Coast Guard review checks for both adequacy of the test results and accuracy and completeness of the product description in the production inspection procedure. After resolving any discrepancies, the Coast Guard notifies the laboratory in writing that the submission is acceptable if the product is found to meet all of the applicable requirements. The laboratory then commences recognition of the product in accordance with their established procedures, and marks the product in production with the "recognition mark" of the laboratory. The recognition mark is considered adequate evidence that a component meets appropriate non-standard component performance requirements, and serves the same function as an affidavit under the letter of acceptance program.

The key difference between component recognition and the Coast Guard letter of acceptance program for non-standard components is that under component recognition, the component manufacturer's production quality control program is supplemented by a program of oversight by the recognized laboratory. This quality control oversight program requires the manufacturer to perform certain production tests and inspections, and includes periodically witnessing or supervising the manufacturer performing those tests and inspections, auditing the manufacturer's quality control records, and selecting random product samples

for follow-up product testing at the laboratory. Beyond product testing to obtain acceptance every five years, the Coast Guard letter of acceptance program contains no specific provision for Coast Guard or independent laboratory oversight over quality control in production.

While the use of non-standard components in PFD's was in the developmental stage, the existing procedures for acceptance functioned generally well. However, the use of non-standard components has not increased to almost completely replace standard components in the manufacture of PFD's. Experience with certain generic categories of components has grown to where individual testing has become in many cases redundant, since many non-standard components are virtually identical, and many generic products have established a sufficient satisfactory field service history that they may now be considered, as classes, to provide a degree of safety equivalent to standard components. The volume of testing currently being done, coupled with the associated administrative efforts involved in processing requests for Coast Guard letters of acceptance, has overloaded the system to create a perpetual backlog of acceptance requests. This backlog often causes lengthy delays in processing new requests. These delays may limit the flexibility of PFD manufacturers in selecting component suppliers, which can lead to production delays and additional production costs which are then passed on to the consumer. The staff time required to effectively administer the program also causes inordinate delays in other activities of interest to the industry, such as review of submissions for component recognition and approval of PFD's and other equipment.

Particularly for fabric, the nature of the manufacturing process has made the Coast Guard letter of acceptance program ineffective. In many instances, the person nominally responsible for the quality of the product (who signs the affidavit certifying the same) in reality has very limited direct knowledge of or control over the specific lot to which the affidavit applies. The supplier of a fabric (referred to within the industry as a "converter"), who purchases rough or "greige" goods from a weaving mill and then coordinates the necessary processing through one or more dyers and finishers, in all likelihood never actually comes in contact with the fabric he/she is certifying. Some dyers and finishers do not even maintain laboratories, and so do not have the

ability to test the fabric in production. The effect of this lack of direct involvement by the fabric converter in the manufacturing process and in quality control at the various manufacturing steps and locations is that fabrics accepted under Coast Guard letters of acceptance exhibit sufficient variance in production that they have recently been prone to frequent failures when randomly tested for compliance by a recognized laboratory. The prevalence of failures during random laboratory testing strongly suggests that some fabric used in the construction of Coast Guard approved PFD's may not meet the performance requirements that were used to evaluate the component when originally submitted to the Coast Guard pursuant to requesting a letter of acceptance. As the primary structural component of a PFD, failure of PFD fabric creates a significant potential for failures of PFD's resulting in serious injuries or fatalities.

Considered Alternatives

Three alternative approaches to the resolution of the problems of the existing acceptance program for non-standard components were considered and will be discussed individually, with the selected alternative which is the basis of this proposal discussed last.

Under the first alternative, component manufacturer self-certification, specific production quality control requirements for all components, both standard and non-standard, would be established in regulation. These specific production quality control requirements would be similar to those currently in use under the recognized laboratory component recognition program, which were developed jointly with the Coast Guard. The component manufacturer would provide certification directly to the PFD manufacturer that the components meet the applicable requirements. There would be no Coast Guard or recognized laboratory oversight over production quality control. This alternative would be similar to the existing program applied to standard and non-standard components, except that specifically defined production quality control requirements would be provided in place of the existing general requirement to have a quality control program. This alternative is not considered to be an effective solution to the existing problems. Many manufacturers of non-standard components either do not have any established quality control program, even though required by the letter of acceptance to have one, or they have a nominal program but do not implement it effectively enough to assure the

quality of the product. Without an additional enforcement mechanism such as "in factory" oversight of a production quality control program, it is apparent that the industry will not readily comply with any requirement to have a quality control program. The problem of inadequate non-standard components being used in the construction of Coast Guard approved PFD's could be expected to remain.

The second alternative considered is essentially the same as the first, but also with oversight by Coast Guard marine inspectors over production quality control for non-standard components. This alternative is considered not to be viable due to limited Coast Guard resources. Existing regulations in 46 CFR part 160 require visits to PFD manufacturers by inspectors. Due to limited Coast Guard personnel resources, visits by Coast Guard inspectors were replaced in 1983 by implementation of the independent laboratory production testing and inspection procedures in 46 CFR 159.007. There has been no change in the level of Coast Guard personnel resources which would make a return of the marine inspectors to the PFD or component manufacturers feasible.

The third alternative, which forms the basis for this proposal, is establishment of detailed production quality control requirements for all components as in the first and second alternatives, in conjunction with requirements for quality control oversight of non-standard components by a recognized laboratory (component recognition). This proposal, which is similar to the previous alternative except that quality control oversight of non-standard components in production would be provided by a recognized laboratory at the component manufacturer's expense rather than by the Coast Guard, addresses the problems left unresolved by the other considered alternatives. The presence of an independent oversight organization would be intended to encourage a non-standard component manufacturer to tighten up a previously lax quality control program, resulting in a more consistent product. For fabric, this may mean exerting additional control and oversight over the various facilities involved in the manufacturing process. The potential for unsatisfactory product entering the market would thus be significantly reduced. The reduced Coast Guard review time for submissions for component recognition as compared to the time involved to process letters of acceptance would reduce the backlog of submissions and

consequently reduce delays in acceptance of components.

The proposed quality control requirements for standard components and recognized non-standard components principally represent a codification of longstanding practice. Standard components and recognized non-standard components have had a generally good record of quality control. Accordingly, these proposed rules as they address these products should have little or no impact. The purpose of this proposal as it addresses these products is to explain current practice and to provide an opportunity for public comment.

Performance Requirements for Thread

The present requirements for thread used in PFD's are contained in 46 CFR 160.001-2(j), which requires that thread for wearable PFD's, depending upon its composition, meet the requirements of one of three federal specifications. The three acceptable compositions are cotton, nylon, and polyester. Requirements for thread for securing beackets on commercial ring buoys (throwable PFD's) are contained in 46 CFR 160.050-3(e), which specifies a federal specification for nylon thread and allows for other threads of equivalent size and strength.

Cotton thread has been the cause of several reported PFD failures. Although cotton thread is stronger for a particular size than synthetic thread when new, it is susceptible to deterioration from fungal attack (i.e., mildew). Field reports of equipment failures strongly suggest that cotton thread's vulnerability to environmental elements typical of expected PFD use conditions make it unsuitable for use in PFD's. The nature of thread's role in a PFD means that a failure of thread could lead to a total failure of the device in which it is used if any load is applied. For that reason, these proposed rules would eliminate cotton thread as an acceptable PFD component in structural applications.

This prohibition of cotton thread is to a large extent academic, since there are presently no PFD manufacturers using cotton thread in construction. The availability of cotton thread on the market is very limited. Cotton thread is generally not considered to be suitable for use with synthetic fabrics, and so a natural consequence of the industry's conversion to the use of synthetic fabrics is that the use of cotton thread was discontinued.

An analysis of all thread acceptances issued since the inception of the component acceptance program revealed that all accepted threads to date have met the requirements of either

a federal specification in 46 CFR 160.001-2(j) (for sizes other than those specified), or one of two other military specifications, MIL-T-43548 for polyester core thread and MIL-T-43624 for spun polyester thread. All of these specifications contain detailed quality control provisions which are considered to be equivalent to the quality control provisions in these proposed rules. In view of the excellent field service history and lack of failures (in either the field or the laboratory) involving these currently non-standard threads, quality control oversight is not considered to be necessary. Accordingly, these rules would redesignate standard components all synthetic threads certified to comply with the specified portions of the referenced federal and military specifications. It is anticipated that there would be few, if any, non-standard threads.

Future Additional Projects

Future proposed rules will address performance requirements for fabric and other PFD components. A separate subpart will be devoted to each component. In this rulemaking, only the general subpart 46 CFR 164.019, which applies to all components, and 46 CFR 164.023, which deals specifically with thread, are included. It is envisioned that future proposed rules relating to other components will follow closely the structure and format of the thread subpart and will include proposals to adopt performance standards similar to those currently applied to non-standard components under the Coast Guard letter of acceptance program. These performance standards may be presented as referenced to appropriate voluntary industry standards, where suitable such standards exist.

Cross Reference to Existing Regulations

Some revisions to existing regulations in title 46 CFR would be necessary to implement these proposed rules. References to the component acceptance procedures and quality control and certification requirements in proposed subpart 164.019 would be added to the "Materials" section(s) of each of existing subparts 160.001, 160.002, 160.005, 160.047, 160.048, 160.049, 160.050, 160.052, 160.053, 160.055, and 160.077. Existing requirements for thread in the "Materials" section(s) of each of existing subparts 160.001, 160.002, 160.005, 160.047, 160.048, 160.049, 160.050, 160.052, 160.055, and 160.077 would be replaced with references to the requirements in proposed subpart 164.023. Proposed subpart 164.023 would be referenced as an exception to the

material requirements of the military specification referenced in 46 CFR 160.053-3(a).

5. Draft Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied at the address listed under **ADDRESSES**. Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The cost of these proposed rules is estimated to be \$11,500.00 annually for the first five years. This figure represents the cost for five existing manufacturers/converters of non-standard component fabrics not currently under a quality control oversight program of a recognized laboratory to enter and maintain their products in such a program over that period. Based upon an average 7 million PFD's produced and sold each year, this cost would be reflected in an increase in the cost of an approved PFD of 0.815 cents over the initial five year period if all added component manufacturer costs were passed on to the PFD manufacturer and then to the consumer. Continuing costs in subsequent years are estimated to be similar.

Thread is the only PFD component other than fabric for which a significant number of non-standard products not under recognized laboratory quality control oversight are in use. However, because these proposed rules would in effect convert all existing non-standard component threads to standard components, the proposed requirement for quality control oversight for non-standard components would not be expected to result in any increased costs for thread manufacturers.

The proposed production quality control requirements would be expected to have little or no impact on manufacturers of standard components and non-standard components currently under recognized laboratory quality control oversight. As stated previously, the proposed regulations essentially represent a codification of longstanding procedures and requirements that are currently applied to these components.

These proposed rules would be expected to result in a savings to the Coast Guard of an estimated one half man-year of professional staff effort currently spent in the administration of the non-standard component letter of acceptance program, a benefit of

approximately \$30,000.00 annually. The increase in available staff time would also benefit PFD and PFD component manufacturers, since it would expedite the processing of PFD approval and component acceptance submissions, thus reducing the potential for manufacturing and delivery delays due to long waits for Coast Guard review.

The effective conversion of all non-standard component threads currently accepted under Coast Guard letters of acceptance to standard components would result in a savings to the industry of an estimated \$500.00 per product every five years. This figure represents the cost of sending detailed product specifications and performance test results to the Coast Guard for renewal of the letter of acceptance every five years. Based on approximately 25 products currently accepted under letters of acceptance, the total savings to the industry would be \$12,500.00 over a five year period or an average of \$2,500.00 per year.

It is expected that the proposed additional quality control requirements for non-standard components would reduce the incidence of failures of these components currently seen in random performance testing. Although difficult to quantify, the potential for future injuries or fatalities due to failures of components which do not meet the specified minimum performance requirements would therefore be reduced.

An intangible benefit of these proposed rules is that previously unpublished policies and procedures would be made readily available to the public, reducing the likelihood of errors and misinterpretations of existing policy.

6. Environmental Analysis

This proposed rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with sections 2.B.2.c and 2.B.2.1 of Commandant Instruction (COMDTINST) M16475.1B. A Categorical Exclusion Determination statement has been prepared and is included as part of the regulatory package.

7. Federalism Assessment

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

8. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Coast Guard has considered whether this rulemaking is likely to have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses which are not dominant in their field and which would otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

There are an estimated five fabric manufacturers or converters who would be required to obtain component recognition for PFD component fabric under these proposed rules. The added cost per manufacturer would be an estimated \$11,435.00 over the initial five-year period, or \$2,287.00 per year. Based upon the quantity of fabric produced, this cost would represent less than one-tenth of one percent of gross revenues for PFD component fabric. It is likely that this cost would be partially or entirely passed on to the PFD manufacturer and ultimately the PFD buyer. In view of these considerations, and the fact that PFD component fabric generally represents only a small portion of a fabric manufacturer's business, the impact on these manufacturers is considered to be minor.

Based upon these estimates, the Coast Guard certifies that the proposed regulations would not have a significant economic impact on a substantial number of small entities.

However, if you feel that your business qualifies as a small entity and would suffer significant, negative, economic impact, please explain why your business qualifies as a small entity and to what degree the proposed regulations would economically affect your business. Cost data submitted will be thoroughly evaluated before publication of the final rule.

9. Paperwork Reduction Act

This proposed rulemaking contains information collection and recordkeeping requirements. Some of these requirements have previously been reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*). The section numbers of these requirements in 46 CFR and the corresponding OMB approval numbers are as follows:

Section	OMB approval number
§ 164.019-7	2115-0141
§ 164.019-9	2115-0141
§ 164.019-13	2115-0141
§ 164.019-15	2115-0141

Other information collection and recordkeeping requirements are either new or have not been approved by OMB. They have been submitted to the OMB for approval under the provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*). Persons desiring to comment on these information collection and recordkeeping requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, ATTN: Desk Officer, Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under **ADDRESSES**. The section numbers in 46 CFR are as follows:

- § 164.019-5
- § 164.023-15

List of Subjects in 46 CFR Part 164

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Coast Guard proposes to amend chapter I, part 164 of title 46 of the Code of Federal Regulations as follows:

1. By adding a new subpart 164.019 to read as follows:

Subpart 164.019—Personal Flotation Device Components

- Sec.
- 164.019-1 Scope.
 - 164.019-3 Definitions.
 - 164.019-5 Standard components.
 - 164.019-7 Non-standard components.
 - 164.019-9 Procedure for acceptance of revisions of design, process, or materials.
 - 164.019-11 Certification (Affidavits).
 - 164.019-13 Production quality control requirements.
 - 164.019-15 Component manufacturer records.
 - 164.019-17 Recognized laboratory.

Subpart 164.019—Personal Flotation Device Components

Authority: 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 164.019-1 Scope.

(a) This subpart contains requirements for standard personal flotation device (PFD) components, procedures for acceptance of non-standard PFD components, and

production quality control requirements for all PFD components.

(b) Other regulations in this part contain specific requirements applicable to particular PFD components.

(c) Other regulations in part 160 of this subchapter contain specific requirements and limitations concerning the use of PFD components in the construction of particular PFD's.

(d) PFD's may be constructed only with PFD components meeting the requirements of this subchapter.

(e) PFD components may be used in the construction of PFD's only in accordance with their Use Codes.

§ 164.019-3 Definitions.

(a) *Acceptance* means certification by the Coast Guard that a component is suitable for use in the manufacture of approved PFD's.

(b) *Commandant* means the Chief of the Survival Systems Branch, Office of Marine Safety, Security, and Environmental Protection, U.S. Coast Guard. Address: Commandant (G-MVI-3/14), U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593-0001. Telephone: 202-267-1444.

(c) *Component manufacturer* means either the manufacturer of a component, or a component supplier who has obtained acceptance of a component.

(d) *First quality workmanship* means construction which is free from any defect materially affecting appearance or serviceability.

(e) *Inspector* means a recognized laboratory or Coast Guard inspector.

(f) *Non-standard component* means a PFD component which is equivalent in performance to a standard component.

(g) *PFD Type* means the performance type designation as shown in 33 CFR 175 and this subchapter.

(h) *Standard component* means a PFD component which complies in all respects with the material, construction, and performance requirements of a subpart in this part or part 160 of this subchapter.

(i) *Use Code* means an alphanumeric code assigned to a PFD component to designate the PFD Type(s) in which it may be used. Use codes are as listed in Table 164.019-3 of this section.

TABLE 164.019-3

Use code	PFD type acceptable for use
1	I, II, and III.
2	II and III.
3	III.
4B	IV (all Ring Buoy).
4BC	IV (Buoyant Cushions).
4RB	IV (Recreational Ring Buoy only).
5	Wearable Type V (intended use must be specified).

TABLE 164.019-3—Continued

Use code	PFD type acceptable for use
5SB	V (Sailboard devices).
5WV	V (Work vests).
6	Special, limited, or restricted use.
Suffix A	Adult only.
Suffix C	Child only.

§ 164.019-5 Standard components.

(a) Except as provided in paragraph (b) of this section:

(1) Each shipment of standard components must be accompanied by an affidavit complying with § 164.019-11;

(2) A sample affidavit, or a copy of the affidavit provided with the first shipment of a standard component to a PFD manufacturer, must be provided to the Commandant; and

(3) A new sample affidavit must be provided any time the information on the affidavit materially changes.

(b) Affidavits are not required to be provided for standard components under the quality control oversight program of a recognized laboratory.

(c) Each standard component must have one or more Use Codes.

§ 164.019-7 Non-standard components.

(a) *General*. To be used in the construction of PFD's, a non-standard component must be accepted by the Coast Guard.

(b) *Use Codes*. Each non-standard component must have one or more Use Codes.

(c) *Request for acceptance*. To request acceptance of a non-standard component, a letter must be sent to the Commandant. The letter must be provided by the component manufacturer or the recognized laboratory which performs the acceptance testing required by the applicable subpart in this part or part 160. The letter must include the following information:

(1) A statement of the intended use of the component by the PFD manufacturer, and the Use Codes for which acceptance is requested. Intended uses must be taken from the following list:

(i) Outer Envelope Fabric (exterior fabrics on wearable PFD's);

(ii) Cover Fabric (for throwable PFD's);

(iii) Inner Envelope Fabric;

(iv) Closure and Adjustment

Hardware;

(v) Body Strap;

(vi) Grab Strap (applies to buoyant cushions only);

(vii) Tie Tape;

- (viii) Reinforcing Tape;
- (ix) Zipper;
- (x) Thread;
- (xi) Flotation Foam; or
- (xii) Other (specify).

(2) A statement identifying the component in detail and including the unique style, part, or model number, and any other manufacturer's identifying data, if available. No two components which differ in any way, e.g., size, material composition, construction, etc., may utilize the same identification.

(3) A report of a recognized laboratory's test data for the component in accordance with the "Acceptance Tests" section of the applicable subpart of this part. Each report must include the name of the laboratory and a description of the test equipment and test methods used, and must be signed and dated by an authorized laboratory official.

(4) A sample of each component that is being considered. Where the lightest and darkest colors are being tested, samples of both colors must be submitted.

(5) A list of all materials used in the construction of the particular component. The list must contain specific identification and quantity of all materials used.

(6) The identification data required by the applicable subpart of this part.

(7) For mechanical components, i.e. hardware, scaled drawings showing details (and dimensions) of the mechanism.

(8) A statement of tolerances to be maintained in production.

(9) A description of the quality control procedures that will be in effect during production.

(10) A detailed description of the recognized laboratory's procedures for oversight of the manufacturer's program of production quality control, including marking of complying products with the certification marking(s) of the laboratory.

(11) Any appropriate installation or use guidelines for the component.

(d) *Documentation of acceptance.* After review of the request for acceptance, the Coast Guard provides written notice to the applicant that the component, and the procedures for production quality control and recognized laboratory oversight, are accepted, that additional testing or documentation is required, or that the component is not acceptable.

(e) *Alternate requirements.* A component that does not meet the requirements of this subpart may still be accepted if it:

(1) meets other requirements prescribed by the Commandant in lieu

of or in addition to the requirements in this subpart; and

(2) provides at least the same degree of safety as provided by a component that does comply with this subpart.

(f) *Additional Tests.* The Commandant may prescribe additional tests, if necessary, to determine the acceptability or suitability of a particular product.

(g) *Suspension or termination of acceptance.* The procedures in § 2.75 of this chapter for suspension and termination of approvals also apply to acceptances of PFD components.

§ 164.019-9 Procedure for acceptance of revisions of design, process, or materials.

(a) Any change in design, material, manufacturing process, or construction of a non-standard component must be accepted by the Commandant before being used in component production.

(b) Requests for revisions must be submitted in writing, and describe the revised design, material, process, or construction in a similar degree of detail to that originally accepted.

§ 164.019-11 Certification (affidavits).

Where affidavits are required to be supplied, the affidavit must be a notarized certification, provided by the component manufacturer or by an independent laboratory accepted by the Commandant in accordance with part 159, subpart 159.010 of this chapter to make the certification that a standard component complies in all respects with the material requirements of a subpart in this part or part 160 of this subchapter. As a minimum, each affidavit must contain the following information:

(a) Name and address of company;

(b) Name and title of signing company or recognized laboratory official;

(c) Description of the component by use of the unique style, part, or model number, and other applicable distinctive characteristics such as weight, size, denier, treatments or coatings, etc.;

(d) Production data (to include lot, batch number, and quantity shipped) in sufficient detail to enable the manufacturer or purchaser to trace a shipment of components back to the lots of raw materials used in its manufacture;

(e) The intended use of the component, from the list in § 164.019-7(c)(1);

(f) The PFD Type(s) for which the component is a standard component, as determined by one of the following:

(1) The PFD Type(s) for which the component complies with the standard component material requirements in the

applicable PFD subpart in Part 160 of this subchapter; or

(2) The Use Code(s) of the component;

(g) A statement indicating the specific provision(s) in this subchapter with which the component complies; and

(h) A copy of the records of all required production tests for the lots of components covered by the affidavit.

§ 164.019-13 Production quality control requirements.

(a) *General.* Each component manufacturer must have procedures for maintaining quality control of the materials used in production, manufacturing operations, and the finished product.

(b) *Recognized laboratory oversight.* For non-standard components, the manufacturer's procedures for assuring production quality control must be supplemented by a program of oversight by a recognized laboratory, as described in the oversight procedures submitted for component acceptance in accordance with § 164.019-7(c)(10). The laboratory's oversight program is performed at the place of manufacture or other location at the option of the laboratory inspector and the Coast Guard.

(c) *Production tests and inspections.* Production tests and inspections must be conducted in accordance with this section and part 159, subpart 159.007 of this chapter.

(d) *Responsibilities.* Each component manufacturer and each recognized laboratory inspector must comply with the following, as applicable:

(1) *Component manufacturer.* Each component manufacturer must:

(i) Perform all production tests and inspections required by the applicable subpart of this part;

(ii) Adhere to the accepted quality control procedures for the component as submitted for component acceptance in accordance with § 164.019-7(c)(9); and

(iii) Have a continuing program of employee training and a program for maintaining production and test equipment.

(2) *Recognized laboratory.* The same recognized laboratory that performed the acceptance testing must, as part of its oversight program, at least quarterly, or more frequently if required by the applicable subpart of this part or by the oversight procedures submitted in accordance with § 164.019-7(c)(10):

(i) Audit the component manufacturer's records required by § 164.019-15;

(ii) Perform or supervise the component manufacturer performing each of the tests required by this

section, the applicable subpart in this part, and the accepted quality control and oversight procedures.

(3) During each inspection, the inspector must check for noncompliance by the manufacturer with the manufacturer's established quality control program.

(e) *Component lots*—(1) *Lot numbers*. A lot number must be assigned to each group of components manufactured. A new lot must be started whenever any change is made in materials, design, or production method, and whenever any substantial discontinuity in the manufacturing process (such as a change in shift) occurs. Changes in lots of incoming materials must be treated as changes in materials. Lots must be numbered serially. The lot number assigned, in combination with the unique product name/identification, must enable the component manufacturer (or supplier), by referring to the records required by this subpart, to determine the source(s) of all raw materials used in that lot.

(2) *Lot size*. The maximum lot size for any particular component must be as defined in the subpart in this part that covers the component.

(f) *Samples*—(1) *General*. Procedures for selection of test samples, and required sample sizes, must be as specified in the appropriate subpart of this part which covers the particular component.

(2) The inspector must select different samples than were tested by the manufacturer.

(g) *Detailed product examination*—(1) *General*. In addition to the tests and inspections required by the applicable subpart in this part, the manufacturer or the inspector must examine each sample component to determine that:

(i) The construction, markings, and workmanship conform to the information submitted in the request for acceptance; and

(ii) The component is not otherwise defective.

(2) *Inspection responsibility*. This inspection must be performed by a manufacturer's representative who is familiar with the performance requirements for the component, and all of the production quality control requirements. This person must not be responsible for meeting production schedules, or be supervised by someone who is.

(h) *Accept/Reject criteria*—(1) A component lot passes production testing if each sample tested passes each test.

(2) For test failures in which the basis of acceptability is an average result, a second sampling with an identical number of samples must be taken. The

results of this second sampling must be averaged with the initial results. If the average result passes the test, then the lot may be accepted.

(3) For test failures in which the basis of acceptability is individual sample results, a second sampling must be taken. The size of the second sampling must be as specified in the subpart in this part which covers the component. If each sample in this sampling passes the test, then the lot may be accepted.

(4) A rejected lot of components may be resubmitted for testing, examination, or inspection if the manufacturer first removes each component having the same type of defect or, if authorized by the Commandant or the recognized laboratory, reworks the lot to correct the defect.

(5) A rejected lot or rejected component may not be sold or offered for sale with the representation that it meets the requirements of this subpart or is accepted by the Coast Guard, and may not be used in the construction of Coast Guard approved PFD's.

(i) *Facilities and equipment*—(1) *General*. The manufacturer must provide the test equipment and facilities described in the applicable subpart in this part and in the quality control and oversight procedures submitted in accordance with § 164.019-7(c)(9)-(10) for performing production tests, examinations, and inspections.

(2) *Calibration*. The manufacturer must have the calibration of all test equipment checked at least every 6 months by a weights and measures agency or the equipment manufacturer, distributor, or dealer.

(3) *Facilities for inspector's use*. The manufacturer must provide a suitable place and the necessary apparatus for the inspector to use in conducting or supervising tests. For the detailed product examination, the manufacturer must provide a suitable working environment and a smooth-top table for the inspector's use.

(4) *Access to test facilities*. The inspector must be admitted to any place in the factory where work is being done on PFC components or where components are stored, and may take samples of parts or materials entering into production or completed components for further examinations, inspections, or tests.

(j) *Alternate procedures for standard components*. For standard components, in lieu of the quality control procedures specified in this section, the quality control procedures in a federal or military specification with which the component is required to comply by this subchapter, or alternate equivalent procedures, may be used.

(k) *Additional tests*. The Commandant may prescribe additional production tests and inspections if needed to maintain quality control and check for compliance with the requirements in this subpart.

§ 164.019-15 Component manufacturer records.

(a) Each component manufacturer must keep the records required by § 159.007-13 of this chapter.

(b) Each record required by § 159.007-13 of this chapter must also include the following information:

(1) For each test, the serial number of the test instrument used if there is more than one available;

(2) For each test and inspection, the identification of the samples used, the lot number, the unique component identification, and the quantity of the component in the lot; and

(3) For each lot rejected, the cause for rejection, any corrective action taken, and the final disposition of the lot.

(c) The description or photographs of procedures and apparatus used in testing is not required for the records prescribed in § 159.007-13 of this chapter if the manufacturer's procedures and apparatus meet the requirements of the applicable subpart in this part or the follow-up inspection procedure.

(d) Each component manufacturer must also keep the following records:

(1) Records for all materials used in production, including name and address of the supplier, date of purchase and receipt, and lot number;

(2) A copy of this subpart, and other subparts as applicable to the component manufactured;

(3) Each document incorporated by reference in the applicable subpart(s) of this part;

(4) A copy of the accepted specifications and identifying data; and

(5) Records of calibration of all test equipment, including the identity of the agency performing the calibration, date of calibration, and results.

(e) The records required by paragraph (d)(1) of this section must be kept for at least 60 months after preparation.

(f) Records of tests conducted by the manufacturer, and records of materials entering into construction, including affidavits by suppliers that applicable requirements are met, must be made available to the inspector or to the Commandant (G-MVI-3) for review upon request.

§ 164.019-17 Recognized laboratory.

(a) *General*. To be designated a

recognized laboratory under this subpart, the laboratory must be:

- (1) Accepted by the Coast Guard as an independent laboratory under subpart 159.010 of this subchapter;
- (2) Engaged regularly in the examination, testing, and evaluation of the safety of materials and devices for marine use; and
- (3) Established in factory production inspection and listing and labeling by having an existing program and standards for evaluation, listing, and marking components that are acceptable to the Commandant.

(b) *Designated recognized laboratories.* A current listing of recognized laboratories is available from the Commandant upon request.

2. By adding a new subpart 164.023 to read as follows:

Subpart 164.023—Thread for Personal Flotation Devices

Sec.

- 164.023-1 Scope.
 164.023-3 Specifications and standards incorporated by reference.
 164.023-5 Performance—standard thread.
 164.023-7 Performance—non-standard thread.
 164.023-9 Samples submitted for acceptance.
 164.023-11 Acceptance tests.
 164.023-13 Production tests and inspections.
 164.023-15 Marking.

Subpart 164.023—Thread for Personal Flotation Devices

Authority: 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 164.023-1 Scope.

This subpart contains performance requirements, acceptance tests, and production testing and inspection requirements for thread used in the construction of personal flotation devices (PFD's) approved under part 160 of this subchapter.

§ 164.023-3 Specifications and standards incorporated by reference.

(a) Certain materials are incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the *Federal Register* and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC 20408, and at the U.S. Coast Guard, Survival Systems Branch (G-MVI-3), Washington, DC 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this subpart, and the sections affected are:

(1) Federal Standards and Test Method Standards:

(i) Federal Test Method Standard No. 191 (Textiles, Test Methods, A):

(A) Method 4010, Length-Weight Relation; Thread; Yards Per Pound (m/kg), 164.023-11

(B) Method 4100, Strength and Elongation, Breaking; and Tenacity; of Thread and Yarn; Single Strand, 164.023-7, 164.023-11

(C) Method 5804, Weathering Resistance of Cloth; Accelerated Weathering Method, 164.023-7

(ii) Reserved

(2) Federal Specifications:

(i) V-T-285—Thread, Polyester, E, 164.023-5

(ii) V-T-295—Thread, Nylon, E, 164.023-5

(3) Military Specifications:

(i) MIL-T-43548—Thread, Polyester Core: Cotton-, Rayon-, or Polyester-Covered, C, 164.023-5

(ii) MIL-T-43624—Thread, Polyester, Spun, A, 164.023-5

All reference materials are available from the Naval Publications and Forms Center, Customer Service, Code 1052, 5801 Tabor Ave., Philadelphia, PA 19120

§ 164.023-5 Performance—standard thread.

(a) *Use Codes 1, 2, 3, 4BC, 4RB, 5 (any).* Each thread which complies with all of the requirements of a specification listed in Table 164.023-5(a) is assigned Use Codes 1, 2, 3, 4BC, 4RB, and 5 (any).

TABLE 160.023-5 (A)—USE CODES 1, 2, 3, 4BC, 4RB, 5 (ANY)

Federal or military specification	Material	Type	Class	Ticket No. or letter size
V-T-285E	Polyester	I or II	1	E
V-T-295E	Nylon	I or II	A	E
MIL-T-43624A	Polyester			24
MIL-T-43548C	Polyester cover only			30

(b) *Use Code 4B.* Each thread which meets the requirements of Federal specification V-T-295, Type II, Class A, number size 4, is assigned a Use Code of 4B.

§ 164.023-7 Performance—non-standard thread.

(a) *Use Codes 1, 2, 3, 4BC, 4RB, 5 (any).* Each non-standard thread which meets all of the requirements of paragraphs § 164.023-7(a) (1)-(3) below is assigned Use Codes of 1, 2, 3, 4BC, 4RB, and 5 (any).

(1) *Single strand breaking strength.* The thread, as received, must have a single strand breaking strength of not less than 5.7 pounds, when tested in accordance with Test Method 4100 in

Federal Test Method Standard No. 191 using a Constant-Rate-of-Traverse (CRT) testing machine.

(2) *Single strand breaking strength (after weathering).* After exposure in a carbon-arc weatherometer in accordance with Test Method 5804 in Federal Test Method Standard No. 191 for a period of 100 hours, the thread must retain at least 60 percent of its single strand breaking strength as received, and have a breaking strength of at least 4.7 pounds.

(3) *Loop breaking strength.* The thread must have a loop breaking strength of not less than 10.0 pounds, when tested in accordance with Test Method 4100 in Federal Test Method Standard No. 191

using a CRT testing machine, except that:

(i) Each sample must consist of two 14-inch pieces of thread;

(ii) Both ends of one piece of thread must be secured without twisting in one clamp of the testing machine so that the length of the loop formed equals one half the distance between the clamps. One end of the second piece must then be passed without twisting through the loop formed by the first, and both ends must be secured in the other clamp of the machine. The breaking strength must then be determined as for the single strand test.

(b) *Use Code 4B.* Each non-standard thread which meets all of the requirements of paragraphs 164.023-7(b)

(1)-(2) below is assigned a Use Code of 4B.

(1) *Single strand breaking strength.* The thread as received must have a single strand breaking strength of not less than 36.0 pounds, when tested in accordance with Test Method 4100 in Federal Test Method Standard No. 191 using a CRT testing machine.

(2) *Single strand breaking strength (after weathering).* After exposure in a carbon-arc weatherometer in accordance with Test Method 5804 in Federal Test Method Standard No. 191 for a period of 100 hours, the thread must retain at least 60 percent of its single strand breaking strength.

(c) *Structural applications prohibited.* Cotton thread, and monofilament thread of any composition, may not be used in structural applications.

§ 164.023-9 Samples submitted for acceptance.

A product sample submitted for acceptance as required by § 164.019-7(c)(4) must consist of at least one unit of put-up of thread.

§ 164.023-11 Acceptance tests.

(a) *Performance testing.* Conduct the following performance tests on the samples specified:

(1) *Single strand breaking strength (as received and after accelerated weathering).* The tests described in § 164.023-7 (a)(1) and (a)(2) must each be performed on a minimum of five samples in each condition in each of the lightest and darkest colors submitted for acceptance.

(2) *Loop breaking strength.* The test described in § 164.023-7(a)(3) must be performed on a minimum of five samples in each of the lightest and darkest colors submitted for acceptance.

(b) *Identification testing.* Conduct the following identification tests on samples as specified in the referenced test methods:

(1) *Length/weight ratio.* The average length/weight ratio of the thread in yards per pound must be determined in accordance with Test Method 4010 in Federal Test Method Standard 191.

(2) *Composition.* The generic chemical composition of the thread must be determined by qualitative infrared analysis, thermogravimetric analysis, differential scanning calorimeter, or other equivalent means adequate to conclusively identify the composition of the product tested.

(3) *Elongation.* Elongation at break for the same samples tested in accordance with § 164.023-11(a)(1) must be determined in accordance with Test Method 4100 in Federal Test Method Standard 191.

§ 164.023-13 Production tests and inspections.

(a) *Manufacturer's test equipment and facilities.* The manufacturer must provide the following test equipment and facilities for use in production tests and inspections:

(1) A Constant Rate of Traverse tensile testing machine, capable of initial clamp separation of ten inches and a rate of separation of 12 inches per minute.

(2) Fletcher, Callaway, or U.S. Rubber clamps, or equivalent cam-actuated clamps to prevent slippage and twist of the samples.

(3) An analytical balance or grain-yarn scale, accurate to within 0.25 percent of the measured value.

(b) *Lot size.* Lot size must not exceed 500,000 yards or 100 pounds of any color.

(c) *Sample selection.* Samples must be selected at random by the manufacturer (or inspector, as applicable) after the entire lot of thread has been completed.

(d) *Second sampling.* A second sampling, where required, must consist of five times the original sample size.

(e) *Manufacturer's production tests.* The following tests must be performed on the samples indicated on each lot of thread:

(1) *Breaking strength.* One sample must be tested in accordance with § 164.023-7(a)(1) or § 164.023-7(b)(1), as applicable.

(2) *Length-weight ratio.* One sample must be tested in accordance with § 164.023-11(b)(1).

(f) *Recognized laboratory production tests.* For non-standard components, the following tests and inspections must be performed by a recognized laboratory:

(1) *Composition.* At least annually, one sample of each accepted thread must be tested in accordance with § 164.023-11(b)(2).

(2) *Breaking strength.* At least quarterly, one sample in each of the lightest and darkest colors accepted must be tested in accordance with § 164.023-7(a)(1) or § 164.023-7(b)(1), as applicable. This test may be either performed by a recognized laboratory, or witnessed by a recognized laboratory inspector at the manufacturer's plant, at the laboratory's discretion.

(3) *Elongation.* At least annually, one sample of each accepted thread in each of the lightest and darkest colors accepted must be tested in accordance with § 164.023-11(b)(3). This test may be either performed by a recognized laboratory, or witnessed by a recognized laboratory inspector at the manufacturer's plant, at the laboratory's discretion.

(g) *Accept/reject criteria.* A lot may

be accepted provided that the results of required production testing meet the following criteria:

(1) Breaking strength test results must be within 10 percent below and 20 percent above the acceptance testing values.

(2) Length/weight values must be within 5 percent of the acceptance testing values.

(3) Elongation values must be within 20 percent of the acceptance testing values.

(4) Composition testing must indicate that the sample tested is of identical composition to the sample tested for acceptance.

§ 164.023-15 Marking.

(a) *General.* Each shipping label, and each spool or individual unit of put-up, must be permanently and clearly marked in a color which contrasts with the color of the surface on which the marking is applied. Each label shall be marked with:

(1) The manufacturer's or supplier's name, trade name, or symbol.

(2) The unique style, part, or model number of the thread.

(3) The size of the thread.

(4) The composition of the thread.

(5) The lot number of the thread.

(b) *Non-standard thread.* In addition to the markings specified in paragraph (a) of this section, each unit of put-up of non-standard thread must be marked with the appropriate recognized laboratory's certification marking(s).

Dated: October 18, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard Acting Chief,
Office of Marine Safety, Security and
Environmental Protection.

[FR Doc. 89-26370 Filed 11-9-89; 8:45 am]

BILLING CODE 4910-14-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1022, 1043, 1044, 1047, 1051, 1058, 1061, 1063, 1067, 1070, 1080, 1081, 1083, 1084, 1085, 1091, 1104, 1136, 1143, 1161, 1167, 1169, 1170, and 1331

[Ex Parte No. 55 (Sub-No. 73)]

Practice and Procedure; Miscellaneous Amendments; Revisions

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; Extension of time to file comments.

SUMMARY: Notice of the Commission's proposal to revise the above-numbered parts of Title 49, Code of Federal Regulations, was published in the *ICC Register* and *Federal Register* on

October 11, 1989. (54 FR 41643). The due date for comments was set as November 13, 1989. National Motor Freight Traffic Association, Inc., Central States Motor Freight Bureau, Inc., Eastern Central Motor Carriers Association, Inc., Middle Atlantic Conference, Middlewest Motor Freight Bureau, New England Motor Rate Bureau, Inc., Niagara Frontier Tariff Bureau, Inc., Pacific Inland Tariff Bureau, Inc., Rocky Mountain Motor Tariff Bureau, Inc., and Southern Motor

Carriers Rate Conference have requested jointly that the time for filing comments be extended. The Commission has granted a 30-day extension until December 13, 1989.

DATES: Comments may be filed on or before December 13, 1989.

ADDRESSES: Send an original and 10 copies of comments, referring to Ex Parte No. 55 (Sub-No. 73), to: Office of the Secretary Case Control Branch

Interstate Commerce Commission
Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Paul W. Schach (202) 275-7885 or
Richard B. Felder (202) 275-7691.

Decided: November 6, 1989.

By the Commission, Heather J. Gradison,
Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 89-26556 Filed 11-9-89; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register

Vol. 54, No. 217

Monday, November 13, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

(Docket No. 89-029N)

SLD Policy Memoranda; Semi-Annual Listing

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document lists and makes available to the public a memorandum issued by the Standards and Labeling Division (SLD), Regulatory Programs, Food Safety and Inspection Service (FSIS), which contain significant new applications or interpretations of the Federal Meat Inspection Act, the Poultry Products Inspection Act, the regulations promulgated thereunder, or departmental policy concerning labeling.

FOR FURTHER INFORMATION CONTACT:

Ashland L. Clemons, Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION: FSIS

conducts a prior approval program for labels or other labeling (specified in 9 CFR 317.4, 317.5, 381.132 and 381.134) to be used on federally inspected meat and poultry products. Pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), and the regulations promulgated thereunder, meat and poultry products which do not bear approved labels may not be distributed in commerce.

FSIS's prior label approval program is conducted by label review experts within SLD. A variety of factors, such as continuing technological innovations in food processing and expanded public

concern regarding the presence of various substances in foods, has generated a series of increasingly complex issues which SLD must resolve as part of the prior label approval process. In interpreting the Acts or regulations to resolve these issues, SLD may modify its policies on labeling or develop new ones.

Significant or novel interpretations or determinations made by SLD are issued in writing in memorandum form. This document lists one SLD policy memorandum issued from April 1, 1989, through October 1, 1989.

Persons interested in obtaining a copy of the following SLD policy memorandum, or in being included on a list for automatic distribution of future SLD policy memoranda, may write to: Printing and Distribution Section, Paperwork Management Branch, Administrative Services Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington DC 20250.

Memo No.	Title and date	Issue	Reference
119	Labeling of Safe Thawing Instructions on Consumer Packages, September 28, 1989.	What guidelines should be followed when thawing instructions for frozen meat and poultry products appear on a label?	NA

The SLD policies specified in this memorandum will be uniformly applied to all relevant labeling applications unless modified by future memoranda or more formal Agency action. Applicants retain all rights of appeal regarding decisions based upon this memorandum.

Done at Washington DC, on: November 7, 1989.

Ashland L. Clemons,

Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service.

[FR Doc. 89-28562 Filed 11-9-89; 8:45 am]

BILLING CODE 3410-DM

DEPARTMENT OF COMMERCE

Agency Form Under review by the Office of Management and Budget (OMB)

The Commerce Department has submitted a request for review request to OMB for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: U.S. Commerce Department

Title: Solicitations: Request for Proposal (RFP) or Invitation for Bids (IFB)

Form number: OMB 0605-0010

Type of request: Extension of a currently approved collection of information.

Burden: 14,000 respondents; 591,000 reporting hours.

Average hours per response: 42¼ hours

Needs and uses: Solicitations are used to request offers from firms wishing to compete for a DOC contract. Federal law requires that solicitations be distributed to the widest number of potential sources. The forms and format of the solicitations are required by the Federal Acquisition Regulation, the government-wide acquisition regulation required to be followed by all Federal agencies. The costs and burdens imposed by the DOC solicitations are not additional to those imposed by the FAR and Federal acquisition laws.

Affected public: Businesses or other for profit, non-profit institutions, and small businesses or organizations.

Frequency: On occasion.

Respondent's obligation: Required to obtain a benefit.

OMB Desk Officer: Donald Arbuckle, 395-7340.

The interview questions are printed below. A copy of the complete clearance package can be obtained by calling or writing the DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, 14th and Constitution Avenue, Washington, DC 20230.

Written comments and recommendations for the information collection should be sent to Donald

Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 6, 1989

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-26553 Filed 11-9-89; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

Computer Systems Technical Advisory Committee; Closed Meeting

A meeting of the Computer System Technical Advisory Committee will be held November 28 & 29, 1989, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617F, 14th & Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter at (202) 377-2583.

Dated: November 3, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89-26503 Filed 11-9-89; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Order No. 448]

Resolution and Order Approving the Application of the Quad-City Foreign-Trade Zone, Inc., for Special-Purpose Subzone Status at Maytag Plants in Galesburg and Herrin, IL, and Newton, IA; Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Quad-City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 133, filed with the Foreign-Trade Zones Board (the Board) on April 25, 1988, requesting special-purpose subzone status at the large home appliance manufacturing plants of Maytag Corporation in Galesburg and Herrin, Illinois, and Newton, Iowa, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were subject to certain restrictions, approves the application, subject to the following restrictions:

1. Privileged foreign status shall be elected on foreign steel mill products prior to manipulation or manufacturing in the subzones, if the same items are being produced by a domestic plant.
2. Privileged foreign status shall be elected on foreign refrigeration compressors prior to manipulation or manufacturing in the subzones.
3. Privileged foreign status shall be elected on any foreign merchandise that is subject to antidumping or countervailing duty orders at the time of admission to the subzones.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the

Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's Regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Quad-City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 133, has made application (filed April 25, 1988, FTZ Docket 22-88, 53 FR 16303), in due and proper form to the Board for authority to establish special-purpose subzones at the large appliance manufacturing plants of Maytag Corporation, located in Galesburg and Herrin, Illinois, and Newton, Iowa, adjacent to the Quad-Cities, St. Louis, and Des Moines Customs ports of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to the restrictions in the resolution accompanying this action;

Now, therefore, in accordance with the application filed April 25, 1988, the Board hereby authorizes the establishment of subzones at the Maytag plants in Galesburg and Herrin, Illinois, and Newton, Iowa, designated on the records of the Board as Foreign-Trade Subzone Nos. 133A, 133B, and 133C respectively, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations issued thereunder, to the restrictions in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzones in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 1st day of November, 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-26512 Filed 11-9-89; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 446]

Approval for Expansion of Foreign-Trade Zone 86, Tacoma, WA

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, the Puget Sound Foreign-Trade Zone Association, Grantee of Foreign-Trade Zone No. 86, has applied to the Board for authority to expand its general-purpose zone at the Port of Tacoma, Washington, within the Tacoma Customs port of entry, and for authority for manufacturing within the zone on behalf of the tubular goods assembly operation of Kawasaki Thermal System, Inc. (KTS);

Whereas, the application was accepted for filing on January 25, 1988, and notice inviting public comment was given in the *Federal Register* on February 10, 1988 (Docket 6-88, 53 FR 3907);

Whereas, an examiners committee has investigated the application in

accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Tacoma area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the application would be in the public interest, provided approval is subject to a restriction requiring KTS to elect privileged foreign status on any foreign steel mill products admitted to its zone manufacturing operation;

Now, therefore, the Board hereby orders:

That, subject to the foregoing restrictions on the KTS activity, the Grantee is authorized to expand its zone in accordance with the application filed January 25, 1988. The Grantee shall notify the Board for approval prior to the commencement of any additional manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the district Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 3rd day of November 1989.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zone.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-26511 Filed 11-9-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-331-602]

Certain Fresh Cut Flowers From Ecuador; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner and one respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain fresh cut flowers from Ecuador. The review covers four producers and/or exporters of this merchandise and the period November 3, 1986 through February 29,

1988. The review indicates the existence of dumping margins for certain firms during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT:

Joseph A. Fargo or Laurie A. Lucksinger, Office of Antidumping Duty Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255/5253.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1987, the Department of Commerce ("the Department") published in the *Federal Register* (52 FR 8494) the antidumping duty order on certain fresh cut flowers from Ecuador. The Floral Trade Council, the petitioner, and Florisol Cia Ltda., a respondent, requested in accordance with 19 CFR 353.53a(a) (1988) that we conduct an administrative review. We published a notice of initiation on April 27, 1988 (53 FR 15083). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of certain fresh cut flowers from Ecuador (standard carnations, standard chrysanthemums, and pompom chrysanthemums). During the review period such merchandise was classifiable under item 192.17 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under HTS item 0603.10.30. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers four producers and/or exporters of certain fresh cut flowers from Ecuador to the United States and the period November 3, 1986 through February 29, 1988.

United States Price

In calculating United States price for the one responsive firm, Florisol Cia, the Department used exporter's sales price as defined in section 772(c) of the Tariff Act because all sales were made to unrelated parties after importation of the merchandise into the United States. Exporter's sales price was based on the delivered, packed price to unrelated purchasers in the United States. We made deductions for foreign and U.S. inland freight, brokerage and handling charges, credit, and commissions. No other adjustments were claimed or allowed.

We believe that monthly averaging of United States prices provides an adequate measure of fair value. Accordingly, we have continued to calculate a monthly United States price, as was done in the fair value investigation leading to the antidumping duty order.

Foreign Market Value

In calculating foreign market value ("FMV") for the one responsive firm, Florisol Cia, the Department used home market price as defined in section 773 of the Tariff Act, since there were sufficient sales of such or similar merchandise in the home market. Home market price was based on f.o.b. warehouse prices to unrelated purchasers in the home market. We made adjustments to FMV for credit, commission, and the difference in packing expenses of home market and U.S. sales. Florisol Cia claimed an inland freight expense for shipment of the merchandise from the farm to the warehouse. Since the expense from the farm to the airport was deducted from the U.S. selling price, it was necessary to also deduct the freight expense from the farm to the warehouse from the home market selling prices to achieve a proper comparison. No other adjustments were claimed or allowed.

Preliminary Results of the Review

Three firms failed to respond to the Department's antidumping questionnaire: Eden Flowers, Inverflora, and Terraflor. For these firms we relied on the best information otherwise available for purposes of assessment and cash deposit of estimated antidumping duties. As best information otherwise available we used the highest margin in the antidumping duty order. This margin was subsequently increased pursuant to the judgement on March 22, 1989 by the Court of International Trade, sustaining the final determination of sales at less than fair value on remand (court No. 87-04-00627). On July 13,

1989, we published a notice of amendment to the final determination of sales at less than fair value and antidumping duty order (54 FR 29595). In these preliminary results we have used the amended rate as best information otherwise available.

As a result of our review, we preliminarily determine that the following margins exist for the period November 3, 1986 through February 29, 1988:

Manufacturer/Exporter	Margin (percent)
Eden Flowers	23.5
Florisol Cia Ltda.....	0
Inverflora	23.5
Terraflor	23.5

Although we initiated a review of Flores Equinocciales, we have determined that this firm was excluded from the final determination of sales at less than fair value (52 FR 2118, January 20, 1987). Therefore, the Customs Service has not suspended liquidation of entries of this producer's merchandise and we have not conducted an administrative review of its shipments. Six firms withdrew their requests for administrative review. Therefore, we have terminated our review of Flores del Ecuador, Flores del Quinche, Florescarde, Flores de Ibarra, Flores de Puenbo, and Flores de Pichincha. We have instructed the Customs Service to liquidate entries of merchandise during the period November 3, 1986 through February 29, 1988 produced by these firms at the cash deposit rates in effect at the time of entry.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required on shipments of certain fresh cut flowers from Ecuador by the companies under review. For any shipments from the remaining known manufacturers/exporters not covered by this review the cash deposit will continue to be at the rate applicable to each firm (52 FR 8494, March 18, 1987). For any future entries of this merchandise from a new producer and/or exporter, not covered in this review or in the original investigation, whose first shipments occurred after February 29, 1988, and who is unrelated to the reviewed firms or any firm which was subject to the original investigation, no cash deposit shall be required. These deposit requirements are effective for all shipments of certain fresh cut flowers from Ecuador entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of our antidumping regulations published in the *Federal Register* on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22).

Dated: November 2, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-20504 Filed 11-9-89; 8:45 am]

BILLING CODE 3510-DS-28

[A-570-506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from an importer, the Department of Commerce has conducted an administrative review of the antidumping duty order on porcelain-on-steel cooking ware from the People's Republic of China. The review covers one manufacturer and its related third-country reseller in Hong Kong of this merchandise to the United States and the period December 1, 1987 through November 30, 1988. Clover Enamelware Enterprise Ltd., China, and Lucky Enamelware Factory Ltd., Hong Kong,

failed to respond to our questionnaire. As a result, we have determined to use the best information available for cash deposit and appraisal purposes.

Interested parties are invited to comment on these preliminary results. **EFFECTIVE DATE:** November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1988, the Department of Commerce ("the Department") published in the Federal Register (51 FR 43414) an antidumping duty order on porcelain-on-steel cooking ware ("POS cooking ware") from the People's Republic of China ("PRC"). An importer, Jacaman Gift Co., Inc., requested in accordance with § 353.53a(a)(1988) that we conduct an administrative review. We published a notice of initiation of antidumping duty administrative review on April 6, 1989 (54 FR 13913). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of POS cooking ware including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. During the review period, such merchandise was classifiable under item 854.0815, 854.0824, and 854.0827 of the Tariff Schedules of the United States Annotated. The merchandise is currently classifiable under HTS item 7323.94.00. HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the shipments of one manufacturer in the PRC, Clover

Enamelware Enterprise Ltd., and its related third-country reseller in Hong Kong, Lucky Enamelware Factory Ltd., who exported the POS cooking ware to the United States, and the period December 1, 1987 through November 30, 1988.

Clover Enamelware and Lucky Enamelware failed to respond to our questionnaire. As a result, the Department used the best information available for appraisal and estimated cash deposit purposes. The best information available is the rate published in the antidumping duty order.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period December 1, 1987 through November 30, 1988:

Manufacturer/Third-Country Reseller:	Margin (percent)
Clover Enamelware Enterprise Ltd./Lucky Enamelware Factory Ltd. (Hong Kong).....	66.65

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Prehearing briefs and/or written comments may be submitted not later than 30 days after the date of publication. Rebuttal briefs or rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required. For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after November 30, 1988, and who is unreviewed to any reviewed firm, a cash deposit of 66.65 percent shall be required. For any shipments from the remaining known manufacturers/

exporters not covered in this review, a cash deposit shall be required at the rates published in the final results of the last administrative review for each of those firms.

These deposit requirements are effective for all shipments of porcelain-on-steel cooking ware from the People's Republic of China entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and § 353.22a of the Commerce Department's regulations published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22a).

Dated: November 2, 1989.

Eric I. Garfinkel,
Assistant Secretary for Import Administration.

[FR Doc. 89-26505 Filed 11-9-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-087]

Portable Electric Typewriters From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by both petitioner, Smith Corona Corporation, and the respondent, Tokyo Juki Industrial Co., Ltd., the Department of Commerce has conducted an administrative review of the antidumping duty order on portable electric typewriters from Japan. The review covers one manufacturer/exporter of this merchandise to the United States and the period May 1, 1982 through February 28, 1983. We preliminarily found a dumping margin of .0004 percent.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Kelleher or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On October 19, 1988, the Department of Commerce ("the Department") published in the *Federal Register* (53 FR 40926) the final results of its last administrative review of the antidumping duty order on portable electric typewriters from Japan (45 FR 30618, May 9, 1980). The petitioner, Smith Corona Corporation ("SCM"), and the respondent, Tokyo Juki Industrial Co., Ltd. ("Tokyo Juki"), requested that we conduct the administrative review in accordance with § 353.53(a) of the Commerce Regulations (1988). We published a notice of initiation of the antidumping duty administrative review on October 3, 1988. The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of non-automatic portable electric typewriters from Japan that do not incorporate a calculating mechanism, in accordance with the scope determination made in the final results of the administrative review of the antidumping duty order for the May 1, 1981 through April 30, 1982 period (52 FR 1504, January 14, 1987). During the review period, such merchandise was classifiable under items 676.0510 and 676.0540 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item numbers 8469.21, 8469.29, 8469.31, and 8469.39. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

On March 18 and November 23, 1988, the Department submitted to the Court of International Trade final results of a revised determination with respect to the scope of the antidumping duty order pursuant to the remand orders from the Court in *Smith Corona Corporation v. United States* (Slip Op. 87-145, December 31, 1987 and Slip Op. 88-127, September 20, 1988). In the revised determination we determined that

portable electric typewriters incorporating a calculating mechanism and those incorporating text memory are within the scope of the antidumping duty order. If this decision is finally affirmed by the courts we will publish our redetermination in the *Federal Register*, suspend liquidation on future entries, and separately review any unliquidated entries of portable electric typewriters incorporating a calculating mechanism and/or text memory for Tokyo Juki for the period May 1, 1982 through February 28, 1983.

The review covers one manufacturer/exporter of Japanese portable electric typewriters and the period May 1, 1982 through February 28, 1983.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the FOB packed price to an unrelated trading company for export to the United States. Where applicable, deductions were made for foreign inland freight, handling charges, and customs clearance fees. An addition was made for duties on imported raw materials not collected when the materials were used to produce subsequently exported merchandise, in accordance with § 353.41(d)(ii) of the Department's regulations published in the *Federal Register* on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.41(d)(ii)). No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market prices, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison.

Home market prices were based on packed FOB or delivered prices to unrelated purchasers in Japan, with appropriate deductions for freight and handling charges. We made a deduction for Japanese customs brokerage charges incurred on imported parts upon withdrawal from bonded warehouse. We also made adjustments, where applicable, for differences in packing and credit expenses. We made further adjustments for differences in merchandise, in accordance with § 353.57 of the Department's regulations. No other adjustments were claimed or allowed.

Because of an allegation by the petitioner regarding sales in the home market at prices below the cost of production we requested cost

information from Tokyo Juki. We found no sales for Tokyo Juki below its cost of production during the review period.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists:

Manufacturer/Exporter	Period	Margin (percent)
Tokyo Juki Industrial Co., Ltd.	05/01/82-02/28/83	0.0004

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any written or oral comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may differ from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 2.40 percent shall be required for shipments by Tokyo Juki. This rate is based on the final results of the last administrative review (53 FR 40926, October 19, 1988), which covered May 1, 1985 through April 30, 1986 sales by Tokyo Juki. For any shipments of this merchandise manufactured or exported by the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of those firms.

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after April 30, 1986, and who is unrelated to Tokyo Juki or any

previously reviewed firm, the cash deposit of 8.85 percent established as the rate for new exporters in the final results of the last review shall remain in effect.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: November 2, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-26506 Filed 11-9-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-355-001]

Leather Wearing Apparel From Uruguay; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On August 16, 1989, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Uruguay. We have now completed that review and determine the net subsidy to be *de minimis* for nine firms and 2.10 percent *ad valorem* for all other firms during the period January 1, 1986 through December 31, 1986. For the period January 1, 1987 through December 31, 1987, we determine the net subsidy to be *de minimis* for 12 firms and 3.21 percent *ad valorem* for all other firms.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 1989, the Department of Commerce ("the Department") published in the Federal Register (54 FR 33751) the preliminary results of the administrative review of the countervailing duty order on leather wearing apparel from Uruguay (47 FR 31032; July 16, 1982). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipment of Uruguayan leather wearing apparel and parts and pieces thereof. During the period of review, such merchandise was classifiable under items 791.7620, 791.7640, and 791.7660 of the Tariff Schedules of the United States Annotated. These products are currently classifiable under item numbers 4203.10.4030, 4203.10.4060 and 4203.10.4090 of the Harmonized Tariff Schedule. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1986 through December 31, 1987, and four programs.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

As a result of our review, we determine the net subsidy to be 0.003 percent *ad valorem* for nine firms, and 2.10 percent *ad valorem* for all other firms during the period January 1, 1986 through December 31, 1986. We determine the net subsidy to be 0.001 percent *ad valorem* for twelve firms, and 3.21 percent *ad valorem* for all other firms during the period January 1, 1987 through December 31, 1987. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

1. The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the nine firms listed below and to assess countervailing duties of 2.10 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1986 and on or before December 31, 1986.

1. Cubalan, S.A.
2. Fair Play, Ltda.
3. Laren, S.A.
4. Modur, S.A.
5. Ness, Ltda.
6. Orolon, S.A.
7. Osami, S.A.
8. Paris New York, S.A.
9. Sirfil, S.A.

2. The Department will also instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the 12 firms listed below and to assess countervailing duties of 3.21 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1987 and on or before December 31, 1987.

1. Bicorn, S.A.
2. Cleson, S.A.
3. Cubalan, S.A.
4. Exportador Esporadico
5. Ladibell, S.A.
6. Modur, S.A.
7. Ness, Ltda.
8. Orolon, S.A.
9. Orwix, S.R.L.
10. Osami, S.A.
11. Raulin, S.A.
12. Union Euroamericana, S.A.

Further, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the 12 firms listed in section 2 above, and to collect cash deposits of estimated countervailing duties of 3.21 percent of the f.o.b. invoice price on shipments of this merchandise from all other firms which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the Federal Register of December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-26510 Filed 11-9-89; 8:45 am]

BILLING CODE 5310-DS-M

USDA-ARS, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, was being manufactured in the United States at the time the foreign instruments were ordered.

Docket Numbers: 88-205R and 88-206R. **Applicant:** USDA-ARS, Beltsville, MD 20705 and Philadelphia, PA 19118.

Instrument: NMR Spectrometer, Model MSL-400 (System C) and Model MSL-300 (System A). **Manufacturer:** Bruker Analytische Messtechnik, West Germany. **Intended Use:** See notices at 53 FR 22685, June 17, 1988. **Order Date:** September 11, 1987.

Reasons: The foreign instrument provides CRAMPS capability and superior CP/MAS performance. **Advice Submitted by:** National Institutes of Health, September 29, 1989.

Docket Number: 89-163. **Applicant:** The College of William and Mary, Gloucester Point, VA 23062. **Instrument:** Electronic Fish Measuring Boards, Model IV. **Manufacturer:** Limnoterra Atlantic, Inc., Canada. **Intended Use:** See notice at 54 FR 30788, July 24, 1989. **Order Date:** May 31, 1989.

Reasons: The foreign instrument provides a waterproof, multiplexed data capture station for logging fish lengths and related information *in situ*. **Advice Submitted by:** National Oceanic and Atmospheric Administration, September 18, 1989.

The National Institutes of Health and the National Oceanic and Atmospheric Administration advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to any of the foreign instruments for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other domestic instrument or apparatus of equivalent scientific value to any of the foreign instruments being manufactured at the time it was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-26507 Filed 11-9-89; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington,

DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-051R. **Applicant:** University of Mississippi Medical Center, Department of Preventive Medicine, 2500 N. State Street, Jackson, MS 39216-4505. **Instrument:** Automated Image Analysis Microscope System for Chromosome Analysis, Model Cytoscan RK2. **Manufacturer:** Image Recognition Systems, United Kingdom. Original notice of this resubmitted application was published in the *Federal Register* of February 21, 1989.

Docket Number: 89-063R. **Applicant:** Michigan State University, Department of Chemistry, East Lansing, MI 48824-1322. **Instrument:** Rotating Anode X-Ray Generator. **Manufacturer:** Rigaku Corporation, Japan. Original notice of this resubmitted application was published in the *Federal Register* of February 24, 1989.

Docket Number: 89-093R. **Applicant:** University of Florida, Department of Pediatric Genetics, Box J-296, JHMHC, Gainesville, FL 32610-0296. **Instrument:** Rapid Karyotyping Analysis System, Model RK1. **Manufacturer:** Image Recognition Systems, United Kingdom. **Intended Use:** The instrument will be used for studies of human chromosomes from various tissues, including amniocytes, lymphocytes, fibroblasts, tumor cells, and chorionic villi. The experiments to be conducted will include:

- (a) origin of market chromosomes,
- (b) breakpoints in structural chromosomal abnormalities (translocation, deletions, inversions, etc.),
- (c) structure of fragile site in X-linked mental retardation,
- (d) origin of clones in *in situ* culture preparations,
- (e) immunoaffinity selection of human tumor cells, and
- (f) gene mapping by *in situ* hybridization.

The instrument will also be used for science-related educational purposes in the following courses:

- (1) BCH 7979-Advanced Research,
- (2) GMS 7979-Advanced Research,
- (3) CMS 5205-Medical Aspects of Human Genetics, and
- (4) BCC 5150, BCC 5130 & BMS 5600-Cytogenetics Rotation for Pediatric, Obstetrics and Gynecology and Pathology Residents respectively.

The original notice of this resubmitted application was received by Commissioner of Customs: February 28, 1988.

Docket Number: 89-101R. **Applicant:** Ohio State University, Polar Research Center, 125 South Oval Mall, Columbus,

OH 43210. **Instrument:** Light Element Isotope Ratio Mass Spectrometer, Model Delta E. **Manufacturer:** Finnigan MAT, West Germany. Original notice of this resubmitted application was published in the *Federal Register* of April 5, 1989.

Docket Number: 89-234. **Applicant:** U.S. Geological Survey, Box 25046, Mail Stop 963, Denver Federal Center, Denver CO 80225. **Instrument:** Filament Degasser Assembly. **Manufacturer:** VG Instruments, United Kingdom. **Intended Use:** Studies of rocks and minerals from a variety of geologic sites and contexts. Experiments will be conducted to obtain isotopic analysis of U, Th, Pb, Nd, Sm, Sr, Rb, K, Ca and possibly other elements separated from naturally occurring rocks and minerals. The objective of the investigations will be determination of the geologic ages of various rocks and minerals in order to understand the evolution of the earth's crust at various localities. **Application Received by Commissioner of Customs:** September 21, 1989.

Docket Number: 89-235. **Applicant:** University of Minnesota, 1919 University Avenue, St. Paul, MN 55104. **Instrument:** Preparative Quench and Stopped-Flow Spectrometer, Model PQ/SF-53. **Manufacturer:** Hi-Tech Scientific, Ltd., United Kingdom. **Intended Use:** The instrument will be used for studies of myosin, actin and staphylococcal nuclease with the objective of understanding mechanisms and detecting intermediate states in the formation of protein structures. **Application Received by Commissioner of Customs:** September 25, 1989.

Docket Number: 89-236. **Applicant:** University of Akron, 225 South Forge Street, Akron, OH 44325. **Instrument:** Mass Spectrometer, Model VG AutoSpec. **Manufacturer:** VG Instruments, Ltd., United Kingdom. **Intended Use:** The instrument will be used to explore the chemistry of simple yet elusive neutrals including hypervalent species, radicals, biradicals, carbenes, atomic and molecular clusters, and molecules apt to rapid intermolecular interactions. **Application Received by Commissioner of Customs:** September 25, 1989.

Docket Number: 89-237. **Applicant:** Old Dominion University, Research Foundation, P.O. Box 6369, Norfolk, VA 23508-0369. **Instrument:** Nitrogen Dioxide Detector, Model 2200. **Manufacturer:** Scintrex/Unisearch, Canada. **Intended Use:** The instrument will be used to perform the research project, ¹⁵N and Inhibitor Studies of Nitrogen Cycling Within a Salt Marsh. The goals of the project are to develop and test techniques for the *in situ*

measurement of microbial nitrogen cycling processes in wetland ecosystems. *Application Received by Commissioner of Customs:* September 25, 1989.

Docket Number: 89-239. *Applicant:* National Institute of Standards and Technology, Radiometric Physics Division, Physics Bldg., Room A221, Gaithersburg, MD 20899. *Instrument:* Cryogenic Radiometer. *Manufacturer:* NPL, United Kingdom. *Intended Use:* The instrument will be used for measuring absolute optical power in the spectral range of the ultra violet to the far infrared. Experiments will be conducted for the improvement of NIST's present scales, research into the extension of measurement capabilities in uncharacterized spectral regions, and research of the transfer of highly accurate measurements to detectors with greater uncertainties. *Application Received by Commissioner of Customs:* September 26, 1989.

Docket Number: 89-240. *Applicant:* University of California, San Diego, Department of Biology, B-0222, La Jolla, CA 92093. *Instrument:* Electron Microscope, Model JEM-1200EX. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument will be used primarily to study the ultrastructure of white blood cells, cells derived from blood vessels, tumor cells, and kidney tissues. Most specimens will be of biological origin, some from experimental animals, some from normal humans, and some from patients with pathological disorders. *Application Received by Commissioner of Customs:* September 26, 1989.

Docket Number: 89-241. *Applicant:* Michigan Technological University, College of Engineering, Houghton, MI 49931. *Instrument:* Combustion Fast Fuel Concentration and Hydrocarbon Analyser, Model HFR Series. *Manufacturer:* Cambustion, Ltd., United Kingdom. *Intended Use:* The instrument will be used for the study of the ignition of methanol in the optical diesel engine. The objective is to systematically study several ignition techniques, evaluate the performance of each and provide comparison information which will lead to the selection and development of an optimized ignition process in the methanol fueled diesel engine. In addition, the instrument will be used for science-related educational purposes in the courses: ME500 Graduate Research in Mechanical Engineering and ME600 Doctoral Research. *Application Received by Commissioner of Customs:* September 27, 1989.

Docket Number: 89-242. *Applicant:* Yale University Medical School, 333 Cedar Street, New Haven, CT 06510.

Instrument: Electron Microscope, Model JEM-1200EX II. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument will be used for studies of brain tissue and neurons from laboratory animals such as rats in experiments focused on the ultrastructural organization of neurons, particularly synapses, axons, dendrites, dendritic spines, and growth cones. *Application Received by Commissioner of Customs:* September 27, 1989.

Docket Number: 89-243. *Applicant:* Cornell University, N.Y. State College of Veterinary Medicine, Ithaca, NY 14853-6401. *Instrument:* Electron Microscope, Model EM 902 PC. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used to provide both routine service and high performance transmission electron microscopy for a wide variety of specimens ranging from surface spread single molecules through stained and unstained ultrathin, thin and thick sections of cells and tissues. Specific research project areas will include: (1) The role of vitamin D in calcium metabolism, (2) the effects of lead and other heavy metals on cardiac development and performance, (3) the regulation of cell division, (4) distribution of ions and specific protein during tumorigenesis, and (5) metabolic regulation of the intestine. *Application Received by Commissioner of Customs:* September 29, 1989.

Docket Number: 89-244. *Applicant:* The Salk Institute for Biological Studies, 10010 North Torrey Pines Road, La Jolla, CA 92037. *Instrument:* Mass Spectrometer, Model JMS-HX110. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument will be used for analyzing peptides, proteins and other biological materials that will be isolated in extremely small quantities. Experiments will include both routine analysis of samples and developmental work such as the identification of new peptide or protein carriers that will improve ionization of the samples and result in more sensitive analyses. *Application Received by Commissioner of Customs:* October 2, 1989.

Docket Number: 89-245. *Applicant:* Washington State University, Purchasing Office, French Administration, Room 220, Pullman, WA 99164. *Instrument:* Rapid Kinetics Instrument, multi-mixing. *Manufacturer:* Biologic, Co., France. *Intended Use:* The instrument will be used to study the reactions of a number of different enzymes, principally 5-enolpyruvylshikimate-3-phosphate synthase, deoxyarabinoheptulosonate-7-phosphate synthase, chorismate mutase and triosephosphate isomerase, all of

which are isolated from recombinant bacteria or yeast. Experiments will involve spray freezing (in about 1 msec) of a rapidly mixed (ca. 2 msec) aqueous solution of enzyme and isotopically enriched (with ^{13}C , or ^{15}N) substrate. The resultant "snow" will then be examined by cryoenzymological solid-state nuclear magnetic resonance spectroscopy. This technique should allow a structural determination of short-lives enzyme-intermediate complexes to be made at low temperatures. *Application Received by Commissioner of Customs:* October 3, 1989.

Docket Number: 89-246. *Applicant:* Medical University of South Carolina, Department of Pharmacy, 171 Ashley Avenue, Charleston, SC 29425. *Instrument:* Mass Spectrometer, Model JMS-HX110/HX110. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument will be used to study the covalent structures of biological molecules such as proteins, polysaccharides, lipids, glycolipids, glycoproteins and lipoproteins and via chemical modifications, aspects of their three dimensional structure and function. In addition, the instrument will be used for educational purposes in the courses: Biomedical Applications of Mass Spectrometry, Research, Thesis Research and Dissertation Research. *Application Received by Commissioner of Customs:* October 3, 1989.

Docket Number: 89-247. *Applicant:* Thomas Jefferson University, Jefferson Medical College, Laboratory of Penna Muscle Institute, IID2, 1020 Locust Street, Philadelphia, PA 19107. *Instrument:* Quadruple Force Transducer Bridge Amplifier & Transducers. *Manufacturer:* Dr. K. Guth, West Germany. *Intended Use:* The instrument will be used for the measurement of force production by preparations of isolated smooth and striated muscles. The muscles are mounted in a chamber containing a physiological salt solution; the ends of the muscles are fixed to the transducer for the measurement of force and to a micrometer for measurement and control of length. *Application Received by Commissioner of Customs:* October 3, 1989.

Docket Number: 89-248. *Applicant:* Pennsylvania State University, University Park, PA 16802. *Instrument:* Ultrahigh Vacuum Surface Analysis System, Model LHS-12E. *Manufacturer:* Leybold Vacuum Products Inc., West Germany. *Intended Use:* The instrument will be used for research on metal-support interactions in catalytic systems involving the study of hydrogenation

reactions over Pt and Pd in contact with titania. Reaction rates and absorbed species will be determined using HREELW, XPS, and AES and the specially-designed high pressure reactor chamber. The principal education uses will be in ChE 600 and 601 courses, which involve thesis-related research. *Application Received by Commissioner of Customs:* October 3, 1989.

Docket Number: 89-249. *Applicant:* University of California, San Francisco, School of Pharmacy, San Francisco, CA 94143-0446. *Instrument:* Stopped-Flow Spectrofluorimeter, Model SF. 17MV. *Manufacturer:* Applied Photophysics, Ltd., United Kingdom. *Intended Use:* The instrument will be used to investigate the rapid kinetics of hemoprotein catalysis and inactivation by mechanism-based inactivating agents under aerobic and strictly anaerobic conditions, with UV and fluorescence detections, and at ambient and low temperatures. The purpose of the work is to define the structures and mechanisms of hemoprotein monooxygenases, peroxidases, dioxygenases. In addition, the instrument will be used to train graduate students and postdoctoral fellows in the use of stopped flow techniques for the analysis of rapid enzyme kinetics. *Application Received by Commissioner of Customs:* October 4, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-26508 Filed 11-9-89; 8:45 am]

BILLING CODE 3510-DS-M

The University of Texas at Austin, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 89-133. *Applicant:* The University of Texas at Austin, Austin, TX 78722. *Instrument:* Circular Dichroism Spectropolarimeter, Model J-20A and Optical Rotary Dispersion Instrument. *Manufacturer:* JASCO Inc.,

Japan. *Intended Use:* See notice at 54 FR 2190, May 16, 1989.

Reasons: The foreign instrument provides optical rotary dispersion spectra along with circular dichroism measurements.

Docket Number: 89-135. *Applicant:* University of Alaska, Fairbanks, Fairbanks, AK 99709. *Instrument:* Isotope Ratio Mass Spectrometer, Model SIRA Series II. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 54 FR 21090, May 16, 1989.

Reasons: The foreign instrument provides an external precision of 0.04°/oo with a continuous flow inlet.

Docket Number: 89-136. *Applicant:* Vanderbilt University, Nashville, TN 37235. *Instrument:* Rapid Kinetics Spectrometer Accessory, Model RX 1000. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* See notice at 54 FR 21091, May 16, 1989.

Reasons: The foreign article directly delivers mixed reagent solutions to the observation cell of an existing spectrophotometer.

Docket Number: 89-142. *Applicant:* University of California, Berkeley, CA 94720. *Instrument:* 3-Syringe Stopped-Flow System, Model SFM-3/PC. *Manufacturer:* Bio-Logic, France. *Intended Use:* See notice at 54 FR 22000, May 22, 1989.

Reasons: The foreign instrument provides: (1) Precise and independent control of the speed of 3 syringes, (2) a vertical observation chamber and (3) temperature control.

Docket Number: 89-146. *Applicant:* U.S. Department of Agriculture, Urbana, IL 61801. *Instrument:* Juice Extraction Press. *Manufacturer:* Erich Pollahne, West Germany. *Intended Use:* See notice at 54 FR 23509, June 1, 1989.

Reasons: The foreign instrument provides a roller type press with rolls that rotate in opposite directions against each other and is capable of processing 240 items per hour.

Docket Number: 89-149. *Applicant:* Knox College, Galesburg, IL 61401. *Instrument:* Stopped-flow Spectrophotometer, Model SF-1B. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice 54 FR 23509, June 1, 1989.

Reasons: The foreign instrument is designed to facilitate instruction of kinetics experiments in undergraduate level chemistry lab courses.

Docket Number: 89-154. *Applicant:* Medical University of South Carolina, Charleston, SC 29425. *Instrument:* Imaging Photon Detector. *Manufacturer:* Instrument Technology Limited, United

Kingdom. *Intended Use:* See notice at 54 FR 24372, June 7, 1989.

Reasons: The foreign instrument can digitize single photon events in X-Y coordinates for subsequent computer analysis in studies of biological phosphorescence and luminescence in the UV region.

The National Institutes of Health advises in its memoranda dated September 28, 1989 that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-26509 Filed 11-9-89; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 91034-9234]

RIN 0693-AA79

Proposed Federal Information Processing Standard for Gosip Conformance and Interoperation Testing and Registration

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Request for comments.

SUMMARY: This proposed Federal Information Processing Standard will adopt conformance and interoperability testing requirements for the Government Open Systems Interconnection Profile (GOSIP). The FIPS establishes the policies, procedures and criteria for conformance and interoperation testing, provides for registration of GOSIP reference entities, and discusses laboratory accreditation and other procedures. This FIPS deals with conformance and interoperability testing for GOSIP Version 1, and not to the GOSIP Version 2 proposed revision. GOSIP is based on international standards and implementation agreements developed by the NIST Workshop for Implementors of OSI.

Prior to the submission of this proposed standard to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of

manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed standard contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specification section. Only the announcement section of the standard is provided in this notice. Interested parties may obtain a copy of the specification section from the Standards Processing Coordinator (ADP), National Institute of Standards and Technology, Technology Building, Room B-64, Gaithersburg, MD 20899, telephone (301) 975-2816. The information collection requirements subject to the Paperwork Reduction Act in the specification section have been approved by the Office of Management and Budget under Control No. 0693-0003.

DATE: Comments on this proposed standard must be received on or before February 12, 1990.

ADDRESS: Written comments concerning the proposed standard should be sent to: Director, National Computer Systems Laboratory, ATTN: Proposed FIPS for GOSIP Conformance Testing, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6028, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Linn, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3624.

Dated: November 6, 1989.

Raymond G. Kammer,
Acting Director.

Federal Information Processing Standards
Publication _____
(date)

Announcing the Standard for GOSIP
Conformance and Interoperation Testing and
Registration

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. *Name of Standard.* GOSIP Conformance and Interoperation Testing and Registration.

2. *Category of Standard.* Hardware and Software Standards, Computer Network Protocols.

3. *Explanation.* This FIPS identifies requirements for conformance testing and interoperability testing of GOSIP protocols and protocol stacks. GOSIP defines a common set of data communication protocols which enable systems developed by different vendors to interoperate and enable the users of different applications on these systems to exchange information.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* U.S. Department of Commerce, National Institute of Standards and Technology, National Computer Systems Laboratory.

6. *Cross Index.*

a. FIPS PUB 146, Government Open Systems Interconnection Profile (GOSIP).

b. NBS Special Publication 500-150, Stable Implementation Agreements for Open Systems Interconnection Protocols, Version 1, Edition 1.

c. NIST Special Publication 500-163, GOSIP Users Guide.

d. General Agreements of the OSINET, OSINET Steering Committees; to be published September 1989.

7. *Related documents.* Related documents are listed in the Reference Section of the specifications.

8. *Objectives.* The primary objectives of this standard are:

a. To reduce the overall information systems costs by making it easier and less expensive to maintain information technology applications and to transfer these applications among different information systems, including replacement systems.

b. To protect the technical assets and staff time of the Federal government by assuring to the extent possible that products (off-the-shelf or government developed) brought into the Federal inventory comply with FIPS.

c. To identify test methods and competent test laboratories for assisting government agencies in procuring products that comply with FIPS.

d. To increase the likelihood of interoperation of products that conform to GOSIP.

9. *Specifications.* Federal Information Processing Standards Publication _____, GOSIP Conformance and Interoperation Testing Registration (affixed).

10. *Applicability.* This FIPS applies to the acquisition of computer network products and services and communications systems or services that provide the functionality defined in FIPS PUB 146, GOSIP. GOSIP, Version 1, supports Message Handling Systems and File Transfer, Access and Management Applications, and the interconnection of the following network technologies: CCITT Recommendation X.25; Carrier Sense Multiple Access with Collision Detection (IEEE 802.3); Token Bus (IEEE 802.4); and Token Ring (IEEE 802.5).

11. *Implementation.* After August 15, 1990, Federal agencies shall require that OSI protocols and protocol stacks procured for GOSIP Version 1 must be successfully tested

and registered in accordance with the provisions for this standard. An implementation schedule establishing requirements for testing of protocols procured for GOSIP Version 2 will be announced at a later date.

12. *Waivers.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology, ATTN: FIPS Waiver Decisions, Technology Building, Room B-154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the Federal Register.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. sec. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Special Information.* The testing requirements for OSI protocols specified in this standard supersede in entirety the Section 2. Conformance, Interoperability, and Performance Testing of FIPS PUB 146, GOSIP, August 1988.

14. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication _____ (FIPSPUBS _____), and title. Specify

microfiche if desired. Payment may be made by check, money order, or NTIS deposit account.

[FR Doc. 89-26571 Filed 11-9-89; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council will hold a public meeting of its Enforcement Committee on November 20, 1989, at 10 a.m., at the Hotel Pierre (De Diego Avenue), Santurce, Puerto Rico. The Committee will discuss fishery management plan enforcement activities, budget issues, billfish regulations, and future actions.

FOR MORE INFORMATION CONTACT:

Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918-2577; telephone: (809) 766-5926.

Dated: November 3, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-26578 Filed 11-9-89; 8:45 am]

BILLING CODE 3510-22-M

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council will hold a public meeting of its Education and Information Committee on November 21, 1989, at 9 a.m., at the Hotel Pierre (De Diego Avenue), Santurce, Puerto Rico. The Committee will revise its goals and objectives, discuss fishery management and information needs, desktop publishing, as well as a meeting schedule for fishermen's organizations.

FOR MORE INFORMATION CONTACT:

Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918-2577; telephone: (809) 766-5926.

Dated: November 3, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-26579 Filed 11-9-89; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Application for Permit; Sea World Research Institute (P167E)

Notice is hereby given that the Applicant has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and the NOAA Fisheries regulations governing endangered fish and wildlife permits (50 CFR part 217 through 222).

1. *Applicant:* Peter Dutton and Donna McDonald, Sea World Research Institute, 1700 South Shores Road, San Diego, California 92109.

2. *Type of Permit:* Scientific Purposes.

3. *Name and Number of Species:*

Green (*Chelonia mydas*)

Olive ridley sea turtles (*Lepidochelys olivacea*)

Loggerhead (*Caretta*)

50 turtles total are proposed to be tagged and released.

4. *Type of Take:* The applicant proposes to conduct scientific studies on Green, Olive ridley, and Loggerhead sea turtles. The applicant estimates there to be approximately 50 total sea turtles on these three species in the study area (San Diego Bay). A net will be set across the channel where they are found. Each turtle captured will be brought into a boat, tagged and released. Turtles captured that have already been tagged will be released. This will continue until over a period of two years.

5. *Location and Duration of Activity:*

The collecting efforts will be in San Diego Bay adjacent to the entrance of the effluent channel of the San Diego Gas and Electric Power Plant. Turtles will be tagged and released every two weeks until all turtles are tagged, then recapture will take place throughout San Diego Bay monthly over a two-year period.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NOAA Fisheries, National Oceanic and Atmospheric Administration, 1335 East-West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of NOAA Fisheries.

Documents submitted in connection with the above application are available

for review by interested persons in the following offices:

Office of Protected Resources, NOAA Fisheries, 1335 East-West Highway, Silver Spring, Maryland 20910; and Director, Southwest Region, NOAA Fisheries, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: November 6, 1989.

Morris M. Pallozzi,

Director, Office of Enforcement, National Marine Fisheries Service.

[FR Doc. 89-26528 Filed 11-9-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

November 6, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the commissioner of customs adjusting limits.

EFFECTIVE DATE: November 7, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-8791. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for carryover and carryforward used. In accordance with a letter dated October 26, 1988, Gorum II is adjusted further to conform with the Harmonized System.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also

see 53 FR 49345, published on December 7, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 1989.

Commissioner of Customs,
Department of the Treasury, Washington,
DC.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 2, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on November 7, 1989, the directive of December 2, 1988 is being amended further to adjust the limits for the following categories, as provided under the terms of the bilateral agreement of November 13, 1982, as amended and extended:

Category	Adjusted 12-month limit ¹
Group I	
200-227, 229, 300-317, 326, 360-369, 400, 410, 414, 464-469, 600-629 and 665-670, as a group.	558,604,358 square meters equivalent
Sublevels in group I	
200.....	590,501 kilograms
218.....	17,407,307 square meters
219.....	17,540,478 square meters
220.....	11,223,109 square meters
225/317/326.....	29,198,118 square meters
226.....	8,739,531 square meters
229-F ²	565,495 kilograms
313.....	61,354,677 square meters
314.....	34,389,793 square meters
315.....	22,237,948 square meters
360.....	880,272 numbers
363.....	13,179,249 numbers
369-L ³	1,270,963 kilograms
604.....	246,312 kilograms
613/614/615/617.....	16,336,716 square meters
669-P ⁴	265,645 kilograms
669-T ⁵	863,400 kilograms
670-F ⁶	1,875,715 kilograms
670-H ⁷	15,741,803 kilograms
670-L ⁸	36,591,215 kilograms
Group II	
237, 239, 330-354, 359, 431-448, 459, 630-654 and 659, as a group.	823,723,550 square meters equivalent
Sublevels in group II	
237.....	539,532 dozen
239.....	2,527,169 kilograms
333/334.....	83,076 dozen
335.....	98,129 dozen
336.....	91,922 dozen

Category	Adjusted 12-month limit ¹
341.....	388,556 dozen
342.....	205,059 dozen
350.....	105,548 dozen
351.....	364,794 dozen
352.....	953,223 dozen
353/354/653/754.....	242,308 dozen
359-H ⁹	2,162,943 kilograms
433.....	13,935 dozen
434.....	9,674 dozen
435.....	28,811 dozen
436.....	4,573 dozen
438.....	37,008 dozen
440.....	10,510 dozen
442.....	46,981 dozen
443.....	39,014 numbers
445/446.....	131,425 dozen
447/448.....	19,232 dozen
631.....	4,489,999 dozen pairs
632.....	4,887,683 dozen pairs
636.....	362,720 dozen
638.....	1,851,780 dozen
639.....	5,067,394 dozen
640.....	3,028,371 dozen of which not more than 1,693,825 dozen shall be in Category 640-Y ¹⁰
642.....	707,641 dozen
643.....	492,000 numbers
644.....	1,559,284 numbers
645/646.....	4,126,556 dozen
647.....	2,777,693 dozen
648.....	3,222,464 dozen
649.....	716,850 dozen
650.....	51,595 dozen
651.....	456,191 dozen
652.....	1,485,540 dozen
659-B ¹¹	750,668 kilograms
659-C ¹²	553,236 kilograms
659-H ¹³	2,630,176 kilograms
659-S ¹⁴	2,119,691 kilograms
Group III	
831-844 and 846-859, as a group.	7,886,768 square meters equivalent
Level not in a group	
845.....	855,279 dozen

¹ The limits have not been adjusted to account for any imports exported after December 31, 1988.

² In Category 229-F, only HTS numbers 5608.11.0000, 5608.19.1010 and 5608.19.1020.

³ In Category 369-L, only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000.

⁴ In Category 669-P, only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

⁵ In Category 669-T, only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9000.

⁶ In Category 670-F, only HTS number 4202.32.9550.

⁷ In Category 670-H, only HTS numbers 4202.22.4030 and 4202.22.8050.

⁸ In Category 670-L, only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3030 and 4202.92.9020.

⁹ In Category 359-H, only HTS numbers 6505.90.1530 and 6505.90.2060.

¹⁰ In Category 640-Y, only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

¹¹ In Category 659-B, only HTS numbers 6114.30.2010 and 6114.30.2020.

¹² In Category 659-C, only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

¹³ In Category 659-H, only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060 and 6505.90.8060.

¹⁴ In Category 659-S, only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-28551 Filed 11-9-89; 8:45 am]

BILLING CODE 3510-DK-M

Textile and Apparel Categories With Harmonized Tariff Schedule of the United States Annotated; Changes to the 1989 Correlation

November 3, 1989.

AGENCY: Committee for the Implementation of Textile agreements (CITA).

ACTION: Changes to the 1989 Correlation.

FOR FURTHER INFORMATION CONTACT:

Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

The Correlation: Textile and Apparel Categories with Harmonized Tariff Schedule of the United States Annotated (1989) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreements program. A notice was published in the Federal Register on July 3, 1989 (54 FR 27924) announcing changes to this Correlation, which were published in the fourth supplement of the Harmonized Tariff Schedule of the United States. The Correlation should be amended further to reflect the changes indicated below:

HTS No.	Category No.
6108.91.0015	Change from 350 to 352.
6108.91.0025	Change from 350 to 352.
6108.92.0015	Change from 650 to 652.
6108.92.0025	Change from 650 to 652.
6108.10.0009	Change from 352 to 338.
6108.90.1003	Change from 652 to 638.
Category	Changes
350	Add 6108.91.0300—Women's negligees, bathrobes and similar articles of cotton, knitted or crocheted.
	Add 6108.91.0040—Girls' negligees, bathrobes and similar articles of cotton, knitted or crocheted.
600	Delete 5402.39.3030
	Delete 5402.39.6000
	Add 5402.39.3010—Other single textured yarn, of polyethylene or polypropylene, not put up for retail sale.

HTS No.	Category No.
	Add 5402.39.3090—Other single textured yarn, other than polyethylene or polypropylene, not put up for retail sale.
	Add 5402.39.6010—Other textured yarn, multiple (folded) or cabled yarn, not put up for retail sale, of polyethylene or polypropylene.
	Add 5402.39.6090—Other textured yarn, multiple (folded) or cabled yarn, other than polyethylene or polypropylene not put up for retail sale.
606	Delete 5402.49.0040
	Add 5402.49.0060—Synthetic filament yarn (other than sewing thread), not put up for retail sale, multifilament, with twist of 5 turns or more per meter, of polyethylene or polypropylene.
	Add 5402.49.0080—Synthetic filament yarn (other than sewing thread), not put up for retail sale, multifilament, with twist of 5 turns or more per meter, other than of polyethylene or polypropylene.
650	Add 6108.92.0030—Women's negligees, bathrobes and similar articles of man-made fiber, knitted or crocheted.
	Add 6108.92.0040—Girls' negligees, bathrobes and similar articles of man-made fiber, knitted or crocheted.

Auggie D. Tantillo,
Chairman, Committee for the Implementation
of Textile Agreements.
[FR Doc. 89-26552 Filed 11-9-89; 8:45 am]
BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Additions and Deletion

AGENCY: Committee for Purchase from
the Blind and Other Severely
Handicapped.

ACTION: Additions to and Deletion from
Procurement List.

SUMMARY: This action adds to and
deletes from Procurement List 1990
commodities to be produced and
services to be provided by workshops
for the blind or other severely
handicapped.

EFFECTIVE DATE: December 13, 1989.

ADDRESS: Committee for Purchase from
the Blind and Other Severely
Handicapped, Crystal Square 5, Suite
1107, 1755 Jefferson Davis Highway,
Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT:
Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On
August 25, September 1, 8, 15 and 22,
1989, the Committee for Purchase from

the Blind and Other Severely
Handicapped published notices (54 FR
35368, 36369, 37358, 38266 and 39034) of
proposed additions to and deletion from
Procurement List 1990, which was
published on November 3, 1989 (54 FR
46450).

Additions

No comments were received
concerning the proposed additions to the
Procurement List. After consideration of
the material presented to it concerning
capability of qualified workshops to
produce the commodities and provide
the services at a fair market price and
impact of the additions on the current or
most recent contractors, the Committee
has determined that the commodities
and services listed below are suitable
for procurement by the Federal
Government under 41 U.S.C. 46-48c and
41 CFR 51-2.6.

I certify that the following actions will
not have a significant impact on a
substantial number of small entities. The
major factors considered for this
certification were:

- The actions will not result in any
additional reporting, recordkeeping or
other compliance requirements.
- The actions will not have a serious
economic impact on any contractors for
the commodities and services listed.
- The actions will result in
authorizing small entities to produce the
commodities and provide the services
procured by the Government.

Accordingly, the following
commodities and services are hereby
added to Procurement List 1990:

Commodities

Cushion Seat, Vehicular
2540-737-3309

Pad, Mattress

7210-01-306-3243

7210-01-306-3244

7210-01-306-3245

7210-01-306-3246

7210-01-306-3247

7210-01-306-3248

7210-01-306-3249

7210-01-306-3250

7210-01-306-3251

Folder, File

7530-00-990-8884

(Requirements for Belle Mead, New
Jersey Supply Facility only).

Services

Grounds Maintenance, Camp
Bonneville, Camp Bonneville,
Washington.

Mailroom Operation, U.S. Corps of
Engineers, Estes Kefauver Building,
U.S. Courthouse and Adjacent
Buildings, Nashville, Tennessee.

Package Reclamation, Ogden Air
Logistics Center, Hill Air Force Base,
Utah.

Deletion

After consolidation of the relevant
matter presented, the Committee had
determined that the commodity listed
below is no longer suitable for
procurement by the Federal Government
under 41 U.S.C. 46-48c and 41 CFR 51-
2.6

Accordingly, the following commodity
is hereby deleted from Procurement List,
1990:

Pamphlets (3229-S)
7690-00-NSH-0010
(Requirements of Government Printing
Office, Philadelphia, Pennsylvania—
DLA Requisitions only)

Beverly L. Milkman,
Executive Director.

[FR Doc. 89-26575 Filed 11-9-89; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1990; Proposed Additions

AGENCY: Committee for Purchase from
the Blind and Other Severely
Handicapped.

ACTION: Proposed Additions to
Procurement List.

SUMMARY: The Committee has received
proposals to add to Procurement List
1990 commodities to be produced by
workshops for the blind or other
severely handicapped. Comments must
be received on or before: December 13,
1989.

ADDRESS: Committee for Purchase from
the Blind and Other Severely
Handicapped, Crystal Square 5, Suite
1107, 1755 Jefferson Davis Highway,
Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT:
Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This
notice is published pursuant to 41 U.S.C.
47(a)(2) and 41 CFR 51-2.6. Its purpose is
to provide interested persons an
opportunity to submit comments on the
possible impact of the proposed actions.

If the Committee approves the
proposed additions, all entities of the
Federal Government will be required to
procure the commodities listed below
from workshops for the blind or other
severely handicapped.

It is proposed to add the following
commodities to Procurement List 1990,
which was published on November 3,
1988 (54 FR 46450):

Diaper, Infant's
6532-01-126-2213

Office Furniture

7110-01-148-2410 Desk
 7110-01-148-2411 Desk
 7110-01-170-3594 Desk
 7110-01-170-3595 Desk
 7110-01-170-3596 Desk
 7110-01-170-3597 Desk
 7110-01-170-3598 Desk
 7110-01-170-7582 Desk
 7110-01-148-2419 Credenza
 7110-00-NFC-0450 Credenza
 7110-00-NFC-0451 Credenza
 7110-01-148-2421 Telephone Cabinet
 7110-01-148-2414 Bookcase
 7110-00-NFC-0452 Bookcase
 7110-00-NFC-0453 Bookcase
 7110-01-226-9888 Table, VDT
 7110-01-226-1706 Table, VDT
 7110-01-226-1707 Table, Printer

Beverly L. Milkman,
 Executive Director.

[FR Doc. 89-26576 Filed 11-9-89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Board; Closed Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by Section 5 of Public Law 94-409, notice is hereby given that a closed meeting of a committee of the DIA Advisory Board has been scheduled as follows:

DATE: Tuesday, 21 November 1989 (9 a.m. to 5 p.m.).

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Intelligence Production.

Dated: November 7, 1989.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-26570 Filed 11-9-89; 8:45 am]

BILLING CODE 3810-01-M

Acceptance of Group Application Under Public Law 95-202 and DODD 1000.20; U.S. Civilian Employees of the Philippine Air Depot Who Served During the Period December 8, 1941 to February 23, 1945

Under the provisions of section 401, Public Law 95-202 and DOD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of the group known as: "U.S. Civilian Employees of the Philippine Air Depot Who Served During the Period December 8, 1941 to February 23, 1945." Persons with information or documentation pertinent to the determination of whether the service of this group is to be considered equivalent to active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DOD Civilian/Military Service Review Board, Secretary or other materials submitted cannot be returned. For further information, contact Lt Col Harris, (202) 692-4747.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-26555 Filed 11-9-89; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.004C]

Extension of Closing Date for New Awards Under the Desegregation of Public Education

AGENCY: Department of Education.

ACTION: Notice of extension of closing date for new awards under the desegregation of Public Education: State Educational Agency Desegregation Program for fiscal year (FY) 1990.

SUMMARY: On August 8, 1989, the Department of Education published in the Federal Register a notice inviting applications under the State Education Desegregation Program for FY 1990. The purpose of this notice is to extend the closing date for transmittal of applications from October 16, 1989 to November 24, 1989, to provide applicants additional time to submit applications. Applicants that have already submitted applications may supplement or revise their applications until November 24, 1989. Three copies of any supplementary information or the revised application must be received by the Application Control Center by November 24, 1989. The Intergovernmental Review deadline is

also extended from December 18, 1989 to January 24, 1990.

FOR APPLICATIONS OR INFORMATION

CONTACT: Sylvia Wright, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2059, FOB #6, Washington, DC 20202-6439. Telephone (202) 732-4358.

Authority: 42 U.S.C. 2000C-2000C-2, 2000C-5.

Dated: November 7, 1989.

Daniel F. Bonner,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 89-26624 Filed 11-9-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Solicitation of Comments From the General Public on the Research, Development, Demonstration, Testing and Evaluation (RDDT&E) Plan, a Chapter of the Environmental Restoration and Waste Management Five-Year Plan

AGENCY: Office of the Secretary, DOE.

ACTION: Notice of availability of the Research, Development, Demonstration, Testing, and Evaluation (RDDT&E) Plan, a complementary document to the Environmental Restoration and Waste Management Five-Year Plan for the general public's review and comment.

SUMMARY: As stated in the Energy Restoration and Waste Management Five-Year Plan, DOE/S-0070 (see 54 FR 36372 (September 1, 1989)), and publicly on numerous occasions, and as testified to before the Congress, the Department of Energy has been preparing the RDDT&E Plan to complement the Environmental Restoration and Waste Management Five-Year Plan and to become a chapter of that document. The RDDT&E Plan has now been completed. The Plan addresses management and direction of programs and activities, establishes an aggressive national program for research and development, identifies technologies to solve problems in an efficient and economical manner, and directs the development of new technologies. The Department is making available for interested groups and individuals the RDDT&E Plan for review and comment. All comments will be considered in the preparation of the updated Plan (1992-1996) which will be available for review and comment in May 1990.

DATES: Comments on the RDDT&E Plan will be accepted through December 13, 1989.

ADDRESSES: Persons requiring copies of the Plan should submit their requests to Mr. R.P. Whitfield, Office of Defense Waste and Transportation Management, DP-12, ATTN: RDDT&E Plan, Department of Energy, Washington, DC 20545 or call (301) 353-4000. Written comments should be addressed to Mr. R.P. Whitfield at the same address.

FOR FURTHER INFORMATION CONTACT: Mr. R.P. Whitfield at (301) 353-3555.

Leo P. Duffy,

Special Assistant to the Secretary for Coordination of DOE Waste Management.

[FR Doc. 89-26629 Filed 11-9-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-44-NG]

Conoco Inc., Order Granting Authorization To Import Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an Order Granting Blanket Authorization to Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Conoco Inc. blanket authorization to import up to 20 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 3, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-26574 Filed 11-9-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP90-19-000]

El Paso Natural Gas Co. v. West Texas Gathering Co.; Petition for Issuance of a Declaratory Order, Complaint, and Motion for Expedited Relief

November 6, 1989.

Take notice that on October 27, 1989, El Paso Natural Gas Company (El Paso), a Delaware corporation, whose mailing

address is Post Office Box 1492, El Paso, Texas 79978, filed a petition for issuance of a declaratory order, complaint, and motion for expedited relief at Docket No. RP90-19 under section 5(e) of the Administrative Procedure Act (5 U.S.C. 554(e) (1982)) and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(2) (1989)), under sections 5(a) and 18 of the Natural Gas Act (15 U.S.C. 717d(a) and 717o (1982)) and Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206 (1989)), and under Rule 212 of the Commission's Rules of Practice and Procedure (18 CFR 385.212 (1989)). El Paso's pleading consists of the following:

(i) a petition for issuance of a declaratory order finding:

(a) a Texas district court action brought by West Texas Gathering Company (West Texas), a jurisdictional "natural-gas company" as defined in Section 2(6) of the Natural Gas Act (15 U.S.C. 717a(6) (1982)), against El Paso seeking to enforce the minimum purchase provisions of its tariff is preempted by Commission Order Nos. 380 and 500; and

(b) the variable minimum purchase provisions of West Texas' Rate Schedule X-1, as reflected in the West Texas-El Paso Gas Purchase Agreement dated January 8, 1958, as amended, are inoperative and of no effect at law under the Commission's Regulations at 18 CFR 154.111 (1988);

(ii) a complaint against West Texas requesting a Commission order directing West Texas to cease and desist from its efforts to enforce the minimum purchase provisions of its tariff; and

(iii) a motion for expedited relief. Respondent West Texas Gathering Company must file an answer to the complaint with the Commission pursuant to Rules 206(b) and 213 of the Commission's Rules of Practice and Procedure (18 CFR 385.206(b) and 385.213 (1989)). Any other person desiring to be heard or to make any protest with reference to said pleading should, on or before Dec. 6, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a protest or motion to intervene in accordance with the requirements of Rule 211 or 214, respectively, of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214 (1989)) and the Regulations Under the Natural Gas Act (18 CFR 157.10 (1989)). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission

and are available for public inspection. Answers to this complaint shall be due on or before December 6, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26522 Filed 11-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-7-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

November 6, 1989.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on October 31, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 3-C.10

First Revised Sheet No. 3-C.11

First Revised Sheet No. 3-C.12

The proposed effective date of these revised tariff sheets is December 1, 1989.

Panhandle states that the revised tariff sheets filed herewith reflect revisions to the Order No. 500 take-or-pay direct billing amounts approved by Commission Orders dated November 25, 1988 and January 26, 1989 in Docket No. RP89-9-000, *et al.*

Panhandle further states that the revised tariff sheets referenced above reflect the first annual adjustment to carrying charges and monthly TOP Fixed Surcharges in accordance with sections 23.4 (c) and (d) of Panhandle's FERC Gas Tariff, Original Volume No. 1.

Panhandle states that copies of its filing have been served on all parties, affected jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such protests should be filed on or before November 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26516 Filed 11-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-8-28-000]

**Panhandle Eastern Pipe Line Co.;
Proposed Changes in FERC Gas Tariff**

November 6, 1989.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on October 31, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 3-C.13

First Revised Sheet No. 3-C.14

First Revised Sheet No. 3-C.15

The proposed effective date of these revised tariff sheets is December 1, 1989.

Panhandle states that the revised tariff sheets filed herewith reflect revisions to the Order No. 500 take-or-pay direct billing amounts approved by Commission Orders dated November 25, 1988, January 26, 1989, and October 10, 1989 and Docket No. RP89-10-000, *et al.*

Panhandle further states that the revised tariff sheets referenced above reflect the first annual adjustment to carrying charges and monthly TOP Fixed Surcharges in accordance with section 24 of Panhandle's FERC Gas Tariff, Original Volume No. 1.

Panhandle states that copies of its filing have been served on all parties, affected jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such protests should be filed on or before November 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26517 Filed 11-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-93-008]

Questar Pipeline Co.; Tariff Filing

November 6, 1989.

Take notice that Questar Pipeline

Company on October 27, 1989, tendered for filing and acceptance certain tariff sheets to its FERC Gas Tariff.

Questar Pipeline states that this filing is made pursuant to 18 CFR 154.63, in compliance with ordering paragraph (C) of the Commission's October 6, 1989, order issued in Docket No. RP88-93, *et al.* and consistent with the Acceptance of Modified Settlement filed by Questar Pipeline on October 24, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before November 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-26518 Filed 11-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-30-000]

**Texas Eastern Transmission Corp.;
Proposed Changes in FERC Gas Tariff**

November 6, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on October 31, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the tariff sheets listed on Appendix A of the filing.

Texas Eastern states that the purpose of this filing is to update Texas Eastern's Fifth Revised Volume No. 1 to reflect changes required as the result of the execution of Service Agreements under Rate Schedules CD-1, CD-2, FT-1 and I by Algonquin Gas Transmission Company (Algonquin) and certain customers on October 13, 15, and 27, 1989. By this filing, Texas Eastern is also updating the Index of Purchasers and the Table of Contents for Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1. The agreements executed before October 16, 1989 are effective

November 1, 1989. Texas Eastern states that the service agreements are being filed with the Commission in a separate filing.

Texas Eastern states that the tariff sheets listed on Appendix A of the filing, proposed to be effective October 16, 1989, reflect the following changes required as a result of the execution of Rate Schedule CD-1, CD-2, FT-1 and I Service Agreements by certain customers referenced in the filing:

(1) Revisions to reflect certain companies' names changes;

(2) The shift of certain companies obligation for Contract Adjustment Demand Charges from Rate Schedule DCQ to Rate Schedule CD-1;

(3) The reduction in certain companies' annual sales entitlements as a result of their election to reduce their Annual Contract Quantities under Rate Schedule CD-1, and to reflect the reduction in certain companies' annual sales entitlements as a result of elections to reduce Annual Contract Quantities under Rate Schedule CD-2;

(4) The Monthly Inventory Determinants applicable to the Contract Year which commenced on November 1, 1988 as specified in the executed Rate Schedule CD-1 and CD-2 service agreements, as applicable;

(5) The reduction of Demand-2 Quantity Nominations under Rate Schedules CD-1 and CD-2 as a result of the amount of service converted to Rate Schedule FT-1 on an annual basis.

Texas Eastern states that the tariff sheets listed on Appendix A of the filing proposed to be effective November 1, 1989 reflect the following changes:

(1) The shift of certain other companies' obligation for Contract Adjustment Demand Charges from Rate Schedule DCQ to Rate Schedule CD-1; the deletion of Contract Adjustment Demand Charge language from Rate Schedule DCQ since it is not applicable to the remaining Rate Schedule DCQ customers;

(2) The Monthly Inventory Determinants applicable to the Contract Year which commences November 1, 1989, as specified in the executed Rate Schedule CD-1 and CD-2 service agreements, as applicable, and nominated by one company under Rate Schedule DCQ in a letter to Texas Eastern dated October 9, 1989, for the Contract Year commencing November 1, 1989, electing to remain a Rate Schedule DCQ customer;

(3) A revised Index of Purchasers, to be effective November 1, 1989, to reflect

Texas Eastern's Rate Schedules CD-1, CD-2, FT-1 and I Service Agreements, pertaining to, as applicable, certain customers as reflected in a companion filing dated October 31, 1989;

(4) Revisions required as the result of the cancellations and withdrawal of Rate Schedule GS pursuant to the abandonment authorization granted to Texas Eastern by the Commission in Docket No. RP-85-177, *et al.*

Texas Eastern also states that the tariff sheets listed on Appendix A of the filing proposed to be effective November 15, 1989 replace the same numbered sheet filed by Texas Eastern on October 13, 1989 in Docket No. CP87-5-006 and are being revised to reflect the withdrawal of Rate Schedule GS and to reflect company name changes.

The proposed effective dates of the tariff sheets are as listed on Appendix A of the filing.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-26519 Filed 11-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-4-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

November 6, 1989.

Take notice that on October 31, 1989 Trunkline Gas Company (Trunkline) tendered for filing revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 as follows:

First Revised Sheet No. 3-A.7
First Revised Sheet No. 3-A.8

The proposed effective date of these revised tariff sheets is December 1, 1989.

Trunkline states that the revised tariff sheets filed herewith reflect revisions to the Order No. 500 take-or-pay direct

billing amounts approved by Commission Orders dated November 25, 1988, January 31, 1989 and May 10, 1989 in Docket No. RP89-11-000, *et al.*

Trunkline further states that these revised tariff sheets reflect the first annual adjustment to carrying charges and monthly TOP Fixed Surcharges as provided in section 21.4(c) of Trunkline's FERC Gas Tariff, Original Volume No. 1.

Trunkline states that copies of its filing have been served on all parties, affected jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such protests should be filed on or before November 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-26520 Filed 11-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-157-002]

Valley Gas Transmission, Inc.; Filing

November 6, 1989.

Take notice that on October 30, 1989, Valley Gas Transmission, Inc. (Valley) filed certain tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2, to be effective November 1, 1989.

Valley states that these tariff sheets were accepted for filing and suspended for five months by Commission order dated May 31, 1989 (47 FERC 61,309). Valley states that this filing moves these suspended tariff sheets into effect as of November 1, 1989, and requests that the Commission grant any waivers necessary in order that these tariff sheets take effect.

Valley states that a copy of this filing has been served on all of its customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211

(1989)). All such protests should be filed on or before November 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-26521 Filed 11-9-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Determination of Excess Petroleum Violation Escrow Funds for Fiscal Year 1990

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of determination of excess amount of petroleum violation escrowed amounts pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986.

SUMMARY: The Petroleum Overcharge Distribution and Restitution Act of 1986 requires the Secretary of Energy to determine annually the amount of oil coverage funds held in escrow that is in excess of the amount needed to make restitution to injured parties. Notice is hereby given that \$40,618,459.94 of the amounts currently in escrow is determined to be excess funds for fiscal year 1990 and, pursuant to the statutory directive, will be made available to state governments for use in specified energy conservation programs.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 [Mann]; (202) 586-2383 [Klurfeld].

SUPPLEMENTARY INFORMATION: The Petroleum Overcharge Distribution and Restitution Act of 1986 (hereinafter "PODRA"), contained in title III of the Omnibus Budget Reconciliation Act of 1986, Public Law No. 99-509, establishes certain procedures for the disbursement of funds collected by the Department of Energy (hereinafter "DOE") pursuant to the Emergency Petroleum Allocation Act of 1973 (hereinafter "EPAA") or the Economic Stabilization Act of 1970 (hereinafter "ESA"). These funds,

commodity referred to as oil overcharge funds, are moneys obtained through enforcement actions instituted to remedy or alleged violations of those Acts.

PODRA requires the DOE, through the Office of Hearings and Appeals (hereinafter "OHA"), to conduct proceedings under 10 CFR part 205, subpart V, to accept claims for restitution from the public and to refund oil overcharge moneys to persons injured by violations of the EPAA or the ESA. In addition, PODRA requires the Secretary of Energy to determine annually the amount of oil overcharge funds that will not be required for restitution to injured parties in refund proceedings and to make this excess available to state governments for use in four energy conservation programs. This determination is required to be published in the Federal Register within 45 days after the beginning of each fiscal year. The Secretary has delegated this responsibility to the OHA Director.

Notice is hereby given that based on currently available information, \$40,616,459.94 is in excess of the amount that is needed to make restitution to injured parties.

To arrive at that figure, the OHA has reviewed all accounts in which moneys covered by PODRA are deposited. PODRA generally covers all funds now in DOE escrow which are derived from alleged violations of the EPAA or the ESA, with certain exclusions. Excluded are funds which (1) have been identified for indirect restitution in orders issued prior to enactment of PODRA; (2) have been identified for direct restitution in a judicial or administrative order; or (3) are attributable to alleged violations of regulations governing the pricing of

crude oil and subject to the settlement agreement in *In re The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan., July 7, 1986). As of September 30, 1989, the total amount subject to the PODRA procedures was \$434,390,105.84.

The OHA has employed the following methodology to determine the excess amount of funds subject to PODRA. We took special account of the provision of PODRA which directs that "primary consideration [be given] to assuring that at all times sufficient funds (including a reasonable reserve) are set aside for making [direct] restitution." Thus, in proceedings in which refund claims are pending, we have on a claim-by-claim basis examined pending claims and established reserves sufficient to pay the entire amount of all claims. The amount of those reserves also includes all refunds ordered by the OHA since the end of the last fiscal year on September 30, 1989. For proceedings in which all claims have been considered or in which no claims have been filed, and the deadline for filing claims has passed, all funds remaining are excess. Small amounts of interest accrued, until transfer, on funds in accounts that were closed (with a zero balance) in the fiscal year 1989 PODRA determination (53 FR 45378 (1988)) are included as part of the "excess" for fiscal year 1990. In accordance with § 3002(c)(3) of PODRA, escrowed amounts are not deemed "excess" where they were designated, prior to the enactment of PODRA, for disbursement to specific persons or classes of persons as indirect restitution. In addition, a relatively small amount of oil overcharge funds is currently subject to the control of the Department's Economic Regulatory Administration,

which finds, as it has found in the past, that none of those funds are currently excess. No "other commitments" are reflected in the reserves. On October 10, 1989, the OHA issued a proposed decision tentatively granting a refund claim from the Century Refining subaccount in excess of the reserve established for that subaccount in the fiscal year 1987 PODRA determination. We have made an adjustment in this notice to increase the amount of the Century Refining subaccount reserve in anticipation of paying that claim.

As indicated above, the total escrow account equity subject to PODRA is \$434,390,105.84. The total amount needed as reserved for direct restitution in those cases is \$393,773,645.90. When this figure is subtracted from the former, the remainder—\$40,616,459.94—is the amount in fiscal year 1990 that is "in excess" of the amount that will be needed to make restitution to injured persons. Appendix A sets forth for each refund case within the OHA's jurisdiction the total product equity eligible for distribution under PODRA, the amount reserved for direct restitution, and the "excess" amount. Appendix B reflect information supplied by the Economic Regulatory Administration regarding cases subject to PODRA under its jurisdiction.

Accordingly, \$40,616,459.94 will be transferred to a separate account within the United States Treasury and made available to the States for use in the four designated energy conservation programs in the manner prescribed by PODRA.

Dated: November 7, 1989.

George B. Breznay,
Director, Office of Hearings and Appeals.

BILLING CODE 6450-01-M

Appendix A: Determination of Excess Oil Overcharges in Fiscal Year 1990

<u>Name of Proceeding</u>	<u>OHA Case Number</u>	<u>Consent Order Number</u>	<u>Current Equity</u>	<u>Reserve</u>	<u>Available for PODRA</u>
GULF OIL CORPORATION	DFF - 0001	NOOR00007Y	\$29,159,654.95	\$0.00	\$29,159,654.95
GETTY OIL COMPANY	HEF - 0209	RGEA00001Z	\$7,127,584.16	\$4,619,181.00	\$2,508,403.16
WORLD OIL COMPANY	KEF - 0005	960S00104Z	\$2,459,088.04	\$0.00	\$2,459,088.04
CROWN CENTRAL PETROLEUM CORP	KEF - 0044	RCWA00000Z	\$6,162,734.74	\$4,162,734.74	\$2,000,000.00
AMTEL, INC.	HEF - 0027	720H00552Z	\$1,244,371.81	\$144,371.81	\$1,100,000.00
MCO HOLDINGS INC & MGPC INC	KEF - 0108	831V00016Z	\$744,228.46	\$144,228.46	\$600,000.00
NORTHEAST PETROLEUM CORP.	HEF - 0137	110H00334Z	\$696,701.81	\$196,701.81	\$500,000.00
PRODUCT TRACKING - PODRA	N/A	N/A	\$472,919.24	\$0.00	\$472,919.24
SUBURBAN PROPANE GAS CORP	KEF - 0038	733V02010Z	\$444,994.58	\$43,383.58	\$401,611.00
PLAQUEMINES OIL SALES INCORP	KEF - 0039	640H00174Z	\$506,212.37	\$106,212.37	\$400,000.00
SAUVAGE GAS SERVICE CO, INC.	KEF - 0024	710H06008Z	\$512,143.08	\$250,334.08	\$261,809.00
EASTERN OIL COMPANY	KEF - 0085	412H00040Z	\$142,678.03	\$0.00	\$142,678.03
WINSTON REFINING COMPANY	HEF - 0589	6D0S00006Z	\$140,987.14	\$0.00	\$140,987.14
MARTINOIL COMPANY	HEF - 0124	910T00120Z	\$128,212.87	\$0.00	\$128,212.87
PETROLEUM HEAT & POWER	HEF - 0150	110H00530Z	\$109,727.24	\$0.00	\$109,727.24
NORTHEAST PETROLEUM CORP.	HEF - 0138	120H00491Z	\$299,536.50	\$199,536.50	\$100,000.00
HOWARD OIL COMPANY	KEF - 0008	240H00280Z	\$93,309.34	\$0.00	\$93,309.34
EVETT OIL CO	KEF - 0020	400H00221Z	\$80,341.08	\$0.00	\$80,341.08
EARTH RESOURCES	HEF - 0205	431S00341Z	\$67,944.53	\$0.00	\$67,944.53
SOUTH HAMPTON REFINING	HEF - 0222	6E0S00002Z	\$41,793.63	\$0.00	\$41,793.63
PACER OIL CO	HEF - 0143	412H00172Z	\$13,448.78	\$0.00	\$13,448.78
CONOCO	HEF - 0010	RCOA00001Y	\$13,208.28	\$0.00	\$13,208.28
SABER ENERGY, INC.	HEF - 0220	6D0S00037Z	\$12,478.43	\$0.00	\$12,478.43
LEO'S-WINSTEAD'S	HEF - 0114	710H01376Z	\$9,075.64	\$0.00	\$9,075.64
APPALACHIAN FLYING SERVICE	HEF - 0028	432K00435Z	\$7,231.69	\$0.00	\$7,231.69
APCO OIL CORPORATION	HEF - 0008	660S00632Y	\$6,272.14	\$0.00	\$6,272.14
KEY OIL COMPANY	HEF - 0106	430H00477Z	\$5,346.95	\$0.00	\$5,346.95
BAK LTD.	HEF - 0034	320H00043Z	\$3,853.55	\$0.00	\$3,853.55
SMITH, C.K. & CO.	HEF - 0172	111H00028Z	\$2,697.61	\$0.00	\$2,697.61
NATIONAL PROPANE CORP.	HEF - 0135	270T00002Z	\$2,188.02	\$0.00	\$2,188.02
UPG, INC	KEF - 0026	641S00123Z	\$2,165.16	\$0.00	\$2,165.16
GOOD HOPE REFINERIES INC.	HEF - 0211	150S00154Z	\$1,644.50	\$0.00	\$1,644.50
HOWELL-QUINTANA	HEF - 0212	610S00068Z	\$1,546.30	\$0.00	\$1,546.30
THRIFTYMAN, INC	KEF - 0018	610H10449Z	\$1,458.35	\$0.00	\$1,458.35
HUSKY OIL COMPANY	HEF - 0213	820S00007Z	\$1,362.95	\$0.00	\$1,362.95
U.S.A. PETROLEUM CORP.	HEF - 0500	960S00093Z	\$1,188.61	\$0.00	\$1,188.61
TENNECO OIL	BEF - 0073	RTNA00001Y	\$1,150.70	\$0.00	\$1,150.70
O'CONNELL OIL CO.	HEF - 0141	110H00513Z	\$1,114.20	\$0.00	\$1,114.20
GIBBS INDUSTRIES INC.	HEF - 0079	110H00494Z	\$629.33	\$0.00	\$629.33
JAY OIL CO	HEF - 0101	6C1H00209Z	\$586.38	\$0.00	\$586.38
RICHARDSON, SID	BEF - 0022	6D0V00025Y	\$460.11	\$0.00	\$460.11
NORTHWEST PIPELINE	HEF - 0264	710V03015Z	\$421.18	\$0.00	\$421.18
CRANSTON OIL SER CO INC/GALEGO	KEF - 0029	111K00123Z	\$413.20	\$0.00	\$413.20
KNUTSON, MARLEN L.	HEF - 0110	000H00422Z	\$408.09	\$0.00	\$408.09
KELLER OIL COMPANY, INC.	HEF - 0103	720H00598Z	\$365.42	\$0.00	\$365.42
NAVAJO REFINING CO.	HEF - 0217	672S00136Z	\$247.08	\$0.00	\$247.08
CLEAN MACHINE, INC	KEF - 0097	999K90079Z	\$215.66	\$0.00	\$215.66
QUAKER STATE OIL	HEF - 0219	340S00352Z	\$210.14	\$0.00	\$210.14
KENT OIL & TRADING COMPANY	HEF - 0578	940X00232Z	\$209.75	\$0.00	\$209.75
MARINE PETROLEUM CO.	HEF - 0122	720H00567Z	\$183.82	\$0.00	\$183.82
ARKANSAS LOUISIANA GAS CO.	HEF - 0201	641S00255Z	\$161.60	\$0.00	\$161.60
GCO MINERALS COMPANY	HEF - 0570	NGCP00001Z	\$145.00	\$0.00	\$145.00
BUBBLE MACHINE	HEF - 0514	999K90040Z	\$114.33	\$0.00	\$114.33
OCEANA TERMINAL CORPORATION	HEF - 0142	240H00361Z	\$109.36	\$0.00	\$109.36
KING & KING ENTERPRISES, INC.	HEF - 0108	710H02500Z	\$108.15	\$0.00	\$108.15

Appendix A: Determination of Excess Oil Overcharges in Fiscal Year 1990

<u>Name of Proceeding</u>	<u>OHA Case Number</u>	<u>Consent Order Number</u>	<u>Current Equity</u>	<u>Reserve</u>	<u>Available for PODRA</u>
PERTA OIL	HEF - 0148	930H00088Z	\$106.14	\$0.00	\$106.14
RICHARDSON AYRES JOBBER	HEF - 0166	640H00354Z	\$104.55	\$0.00	\$104.55
QUARLES PETROLEUM	HEF - 0158	N00H00905Z	\$103.04	\$0.00	\$103.04
PYROFAX GAS CORP	HEF - 0157	641T00099Z	\$85.58	\$0.00	\$85.58
SIGMOR CORPORATION	HEF - 0581	6D0S00091Z	\$83.36	\$0.00	\$83.36
ELM CITY FILLING STATIONS, INC	HEF - 0067	150H00126Z	\$79.46	\$0.00	\$79.46
UNION TEXAS PETROLEUM CORP.	HEF - 0009	6E0S00075Y	\$75.91	\$0.00	\$75.91
ONEOK INC	HEF - 0571	740V01406Z	\$75.21	\$0.00	\$75.21
SWIFTY OIL COMPANY	HEF - 0175	550H00337Z	\$73.94	\$0.00	\$73.94
GULL INDUSTRIES, INC.	HEF - 0085	N00SD0001Z	\$67.76	\$0.00	\$67.76
LA GLORIA OIL AND GAS COMPANY	HEF - 0210	641S00234Z	\$67.50	\$0.00	\$67.50
LEE GARRETT CHEVRON	KEF - 0040	999K90057Z	\$65.64	\$0.00	\$65.64
CRYSTAL OIL CO.	HEF - 0204	641S00098Z	\$52.91	\$0.00	\$52.91
BOX, CLOYCE K.	HEF - 0041	600H00037Z	\$41.65	\$0.00	\$41.65
FARSTAD OIL COMPANY	HEF - 0567	850H00018Z	\$33.19	\$0.00	\$33.19
ALEMANY CHEVRON SERV CENTER	KEF - 0023	999K90059Z	\$29.49	\$0.00	\$29.49
EASTERN OF NEW JERSEY	HEF - 0065	240H00441Z	\$28.71	\$0.00	\$28.71
FERRELL COMPANIES, INC.	HEF - 0587	710T00075Z	\$27.65	\$0.00	\$27.65
GARY ENERGY COMPANY	HEF - 0245	810V00003Z	\$26.47	\$0.00	\$26.47
CAR WASH SERVICE	HEF - 0516	999K90047Z	\$23.74	\$0.00	\$23.74
PRIDE REFINING, INC.	HEF - 0218	6D0S00036Z	\$21.49	\$0.00	\$21.49
FRANKS PETROLEUM	HEF - 0208	641S00421Z	\$21.46	\$0.00	\$21.46
INLAND USA, INC.	HEF - 0096	720H00563Z	\$20.69	\$0.00	\$20.69
CONSUMER OIL CO.	HEF - 0055	930H00097Z	\$17.77	\$0.00	\$17.77
TRESLER OIL COMPANY	KEF - 0019	530H00449Z	\$16.49	\$0.00	\$16.49
SOUTHERN UNION	HEF - 0223	673S00336Z	\$15.54	\$0.00	\$15.54
MCCLEARY OIL CO.	HEF - 0127	310H00439Z	\$14.74	\$0.00	\$14.74
ARAPAHO PETROLEUM, INC.	HEF - 0231	710V03019Z	\$14.52	\$0.00	\$14.52
CENTRAL OIL CO.	HEF - 0047	110H00300Z	\$14.22	\$0.00	\$14.22
GULL INDUSTRIES, INC.	HEF - 0086	010H00056Z	\$13.78	\$0.00	\$13.78
MAPCO INC.	HEF - 0258	740V01246Z	\$10.69	\$0.00	\$10.69
ALLIED MATERIALS CORP & EXCEL	HEF - 0200	660S00302Z	\$10.65	\$0.00	\$10.65
LUCIA LODGE	HEF - 0119	910K00133Z	\$10.21	\$0.00	\$10.21
INMAN OIL CO.	HEF - 0097	720H00557Z	\$9.49	\$0.00	\$9.49
PASCO PETROLEUM INC	HEF - 0146	000H00442Z	\$6.11	\$0.00	\$6.11
MARTIN OIL SERVICE, INC.	HEF - 0123	570H00200Z	\$5.41	\$0.00	\$5.41
ST. JAMES RESOURCES	HEF - 0100	110H00487Z	\$4.98	\$0.00	\$4.98
LOWE OIL COMPANY	HEF - 0118	710H01379Z	\$4.12	\$0.00	\$4.12
INDIAN OIL CO. INC.	HEF - 0095	132H00243Z	\$3.77	\$0.00	\$3.77
DALCO PETROLEUM	HEF - 0060	660T00642Z	\$3.40	\$0.00	\$3.40
ARKANSAS VALLEY PETROLEUM	HEF - 0029	660H10655Z	\$3.36	\$0.00	\$3.36
GULL INDUSTRIES	HEF - 0084	010H00357Z	\$2.92	\$0.00	\$2.92
EAGLE PETROLEUM	HEF - 0243	710V03025Z	\$2.87	\$0.00	\$2.87
PARMAN OIL CORP.	HEF - 0145	430H00219Z	\$2.64	\$0.00	\$2.64
WELLEN OIL CO	HEF - 0584	240H00071Z	\$2.42	\$0.00	\$2.42
HICKS OIL & HICK GAS	HEF - 0091	570E00128Z	\$2.10	\$0.00	\$2.10
TEXAS GAS & EXPLORATION	HEF - 0274	6E0V00015Z	\$2.01	\$0.00	\$2.01
TIPPERARY OIL CO	HEF - 0277	670V00323Z	\$2.01	\$0.00	\$2.01
ARKLA CHEMICAL CORP.	HEF - 0030	641H00364Z	\$1.72	\$0.00	\$1.72
STINNES OIL	HEF - 0174	240H00519Z	\$1.25	\$0.00	\$1.25
TARRICONE INC.	HEF - 0177	240H00291Z	\$1.23	\$0.00	\$1.23
LEATHERS OIL CO.	HEF - 0113	000H00426Z	\$1.19	\$0.00	\$1.19
LEWIS OIL CO.	HEF - 0115	340H00493Z	\$0.95	\$0.00	\$0.95
PETROLEUM SALES/SERVICE	HEF - 0151	340H00488Z	\$0.95	\$0.00	\$0.95
PROPANE GAS & APPLIANCE CO.	HEF - 0156	420E00206Z	\$0.88	\$0.00	\$0.88

Appendix A: Determination of Excess Oil Overcharges in Fiscal Year 1990

<u>Name of Proceeding</u>	<u>OHA Case Number</u>	<u>Consent Order Number</u>	<u>Current Equity</u>	<u>Reserve</u>	<u>Available for PODRA</u>
MISSOURI TERMINAL OIL CO.	HEF - 0131	720H00562Z	\$0.87	\$0.00	\$0.87
MALCO INDUSTRIES	HEF - 0121	530H00435Z	\$0.78	\$0.00	\$0.78
RAMOS OIL CO., INC.	HEF - 0159	910H00144Z	\$0.59	\$0.00	\$0.59
BELCHER, LEONARD E. INCORP.	HEF - 0586	151H00003Z	\$0.54	\$0.00	\$0.54
RESOURCES EXTRACTION PROCCSS	HEF - 0574	740V01409Z	\$0.48	\$0.00	\$0.48
LITTLE AMERICA REFINING	HEF - 0215	830S00012Z	\$0.45	\$0.00	\$0.45
LUKE BROTHERS INC.	HEF - 0120	660E00075Z	\$0.41	\$0.00	\$0.41
PLATEAU INC	HEF - 0272	733V02013Z	\$0.41	\$0.00	\$0.41
PORT OIL COMPANY	HEF - 0153	420H00278Z	\$0.41	\$0.00	\$0.41
LAKES GAS CO INC	HEF - 0112	510E00134Z	\$0.13	\$0.00	\$0.13
PETERSON PETROLEUM	HEF - 0149	240H00491Z	\$0.12	\$0.00	\$0.12
EARLS BROADMOOR	HEF - 0566	640Z00357Z	\$0.07	\$0.00	\$0.07
LOCKHEED AIR TERMINAL INC.	HEF - 0117	930H00199Z	\$0.06	\$0.00	\$0.06
MCCLURE'S SERVICE STATION	HEF - 0128	340H00486Z	\$0.06	\$0.00	\$0.06
POST PETROLEUM	HEF - 0154	910H00145Z	\$0.06	\$0.00	\$0.06
STEVE'S EXXON & TOWING SER.	HEF - 0550	999K90036Z	\$0.06	\$0.00	\$0.06
REYNOLDS OIL CO.	HEF - 0164	810H00324Z	\$0.05	\$0.00	\$0.05
BUD'S EXXON SERVICE	HEF - 0511	999K90038Z	\$0.01	\$0.00	\$0.01
AGWAY, INC.	KEF - 0102	RTYA00001Z	\$1,211,903.52	\$1,211,903.52	\$0.00
AMINOIL U.S.A., INC.	HEF - 0007	740V01259Y	\$4,651,424.76	\$4,651,424.76	\$0.00
ANCHOR GASOLINE CORPORATION	KEF - 0120	740S01247Z	\$7,280,432.12	\$7,280,432.12	\$0.00
ATLANTIC RICHFIELD CO (ARCO)	HEF - 0591	RARH00001Z	\$40,819,547.95	\$40,819,547.95	\$0.00
BEACON OIL CO.	HEF - 0203	910S00008Z	\$2,593,354.20	\$2,593,354.20	\$0.00
BUTLER FUEL CORPORATION	KEF - 0094	110E00421Z	\$59,583.32	\$59,583.32	\$0.00
CENTURY RESOURCES DEVELOPMEN	KEF - 0126	6C0X00287Z	\$2,071,464.74	\$2,071,464.74	\$0.00
DIAMOND INDUSTRIES, INC.	KEF - 0130	320H00097Z	\$323,331.29	\$323,331.29	\$0.00
DORCHESTER GAS CORPORATION	HEF - 0559	670S00113Z	\$476,295.98	\$476,295.98	\$0.00
EDGINGTON OIL COMPANY	KEF - 0003	930S00173Z	\$2,097,322.30	\$2,097,322.30	\$0.00
ELIAS OIL COMPANY	KEF - 0022	412H00105Z	\$141,145.99	\$141,145.99	\$0.00
EMPIRE GAS CORPORATION	KEF - 0048	720T00521Z	\$1,195,905.89	\$1,195,905.89	\$0.00
ENRON CORPORATION	HEF - 0116	730V00221Z	\$52,447,366.41	\$52,447,366.41	\$0.00
ENTEX PETROLEUM INCORPORATION	KEF - 0127	660C00404Z	\$1,651,997.93	\$1,651,997.93	\$0.00
EXXON CORPORATION	KEF - 0087	REXL00201Z	\$21,105,905.87	\$21,105,905.87	\$0.00
GASOLINE MARKETERS OF AMERICA	KEF - 0138	320H00318Z	\$79,467.38	\$79,467.38	\$0.00
GULF OIL CORPORATION	HEF - 0590	RGFA00001Z	\$57,286,785.40	\$57,286,785.40	\$0.00
INDIAN WELLS OIL COMPANY	KEF - 0103	710V02002Z	\$1,549,006.85	\$1,549,006.85	\$0.00
KAISER INTERNATIONAL CORP.	KEF - 0125	6C0X00280Z	\$2,092,303.22	\$2,092,303.22	\$0.00
MARATHON PETROLEUM CO	KEF - 0021	RMNA00001Z	\$6,907,083.13	\$6,907,083.13	\$0.00
MAXWELL OIL CO.	HEF - 0125	000H00425W	\$11,537.54	\$11,537.54	\$0.00
MCCLURE OIL COMPANY	KEF - 0009	660E00083Z	\$48,298.22	\$48,298.22	\$0.00
MEADOWS REALTY COMPANY	KEF - 0133	910S00001Z	\$1,423,929.74	\$1,423,929.74	\$0.00
MOBIL OIL CORPORATION	HEF - 0508	RMOA00001Z	\$4,552,075.74	\$4,552,075.74	\$0.00
MURPHY OIL CORPORATION	KEF - 0095	RMUH01983Z	\$4,516,526.83	\$4,516,526.83	\$0.00
NORTHEAST PETROL INDUSTRY CORP	HEF - 0580	6C0X00241Z	\$1,889,118.90	\$1,889,118.90	\$0.00
O'NEALS SERVICE CENTER	KEF - 0117	999K90056Z	\$4,228.84	\$4,228.84	\$0.00
PEDERSEN OIL, INC.	HEF - 0147	000H00418Z	\$29,134.84	\$29,134.84	\$0.00
PESTER MARKETING COMPANY	KEF - 0134	730S01236Z	\$333,523.09	\$333,523.09	\$0.00
PETROLANE-LOMITA GASOLINE CO.	HEF - 0269	940V00195Z	\$57,510.20	\$57,510.20	\$0.00
PLACID OIL COMPANY	KEF - 0007	6D0S00005Z	\$2,133,074.57	\$2,133,074.57	\$0.00
POINT LANDING FUEL CO.	HEF - 0152	640H00175Z	\$139,592.48	\$139,592.48	\$0.00
POWER PAK CO. INC.	HEF - 0155	610H10452Z	\$57,404.97	\$57,404.97	\$0.00
POWER TEST PETROL DISTRIBUTION	KEF - 0042	240H00499Z	\$511,547.62	\$511,547.62	\$0.00
QUINTANA ENERGY CORP. ET AL.	KEF - 0131	650X00356Z	\$3,974,307.60	\$3,974,307.60	\$0.00
REINAUER PETROLEUM COMPANY INC	KEF - 0110	240H00492Z	\$340,066.97	\$340,066.97	\$0.00
SHELL OIL COMPANY	KEF - 0093	RSHA00001Z	\$15,641,831.99	\$15,641,831.99	\$0.00

Appendix A: Determination of Excess Oil Overcharges in Fiscal Year 1990

<u>Name of Proceeding</u>	<u>OHA Case Number</u>	<u>Consent Order Number</u>	<u>Current Equity</u>	<u>Reserve</u>	<u>Available for PODRA</u>
TESORO PETROLEUM CORP	KEF - 0128	RTSE006A1Z	\$26,314,189.61	\$26,314,189.61	\$0.00
TEXACO INC	KEF - 0119	RTXE006A1Z	\$97,998,882.20	\$97,998,882.20	\$0.00
THOMAS P. REIDY, INC.	KEF - 0137	720H06015Z	\$5,594,773.98	\$5,594,773.98	\$0.00
TOTAL PETROLEUM INC	KEF - 0133	540S00227Z	\$1,761,133.29	\$1,761,133.29	\$0.00
TRUE OIL COMPANY	HEF - 0557	733V02019Z	\$1,899,118.86	\$1,899,118.86	\$0.00
UNITED REFINING COMPANY	KEF - 0132	340S00445Z	\$4,612,912.54	\$4,612,912.54	\$0.00
WEST COAST OIL COMPANY	KEF - 0142	961S00028Z	\$93,372.07	\$93,372.07	\$0.00
WITCO CHEMICAL CORP	HEF - 0227	240S00054Z	\$3,618,286.69	\$3,618,286.69	\$0.00
CENTURY REFINING CO.	BEF - 0041	710V02006Y	\$62,988.66	\$308,953.92	(\$245,965.26)
TOTALS			\$434,390,105.84	\$393,773,645.90	\$40,616,459.94

BILLING CODE 6450-01-C

Appendix B

October 18, 1989.

Memorandum for George B. Breznay,

Director, Office of Hearings and Appeals.

From: Chandler L. Van Orman,

Administrator, Economic Regulatory
Administration.Subject: ERA Input for the PODRA Section
303(c) Report.

We have completed our review of the funds held in escrow as of September 30, 1989, which have not been petitioned under Subpart V. This review was to identify the escrow amount in excess of that necessary to make restitution to persons or classes of persons in accordance with section 3003(b)(1) of the Petroleum Overcharge Distribution and Restitution Act of 1988. Once final payments are made into an escrow account, a Subpart V petition is filed with your office. Consequently, the escrow accounts that we have examined still have balances due. Many of these accounts are for firms in bankruptcy or have been referred to the Department of Justice for collection. Since the extent of possible claims and amounts that will be available to satisfy the claims are not known at this time, it would be inadvisable to consider any of the funds excess.

[FR Doc. 89-26600 Filed 11-9-89; 8:45 am]

BILLING CODE 8450-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Part of Galveston Terminal Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200302

Title: Port of Galveston Terminal Agreement.

Parties: Port of Galveston (Port),
Companhia Maritima Nacional (CMN).

Synopsis: The Agreement provides that CMN vessels shall be granted a container berth and two container cranes at the Port's East End Container Terminal, Port of Galveston. The Port agrees to maintain a Galveston to

Houston to Galveston shuttle service at \$33.00 per one-way move for 12 months. Should CMN's service provide less than 7,500 annual moves, the Port may, at the end of the 12 month period, increase the \$33.00 charge to \$40.00 per move. Rates and charges will be those provided in the Port's Container Terminal Tariff 1-B.

By Order of the Federal Maritime
Commission.

Dated: November 6, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-26502 Filed 11-9-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License;
Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should nor receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573:

CARGAMERICAS Forwarding Services, Inc., 7001 N.W. 25th Street, Suite 100, Miami, FL 33122-1895, Officer: Roberto Perez, President.

Latin American Forwarding Co., 7001 N.W. 25th Street, Suite 600, Miami, FL 33122-1895, Officer: Jorge A. Soberon, President.

MRH International Ltd., 145th Ave. and Hook Creek Blvd., Valley Stream, New York 11581, Officers: Marcia R. Hoffman, President, Catherine Paradiso, Vice President.

Yokkaichi America Corporation, 4401 Atlantic Ave., Suite 410, Long Beach, CA 90807, Officers: Tadashi Nabeta, President, Michio Hagi, Senior Vice President and Director, Hiro Yoshida, Vice President, Yasumitsu Ogawa, Vice President.

By the Federal Maritime Commission.

Dated: November 6, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-26501 Filed 11-9-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder Licenses;
Reissuance of Licenses

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal

Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name/Address	Date Reissued
1169	Beverly Hills Transfer & Storage Co., 221 South Beverly Drive, Beverly Hills, CA 90212.	Oct. 18, 1989.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 89-26539 Filed 11-9-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License;
Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 55OR.

Name: R.E. Ardinger, Inc.

Address: 40 Rector Street, New York, NY 10006.

Date Revoked: September 28, 1989.

Reason: Surrendered license voluntarily.

License Number: 2275.

Name: (Earl E. Egan, Jr., and Samuel E. Millender, Partnership) dba Horizon International.

Address: P.O. Box 15345, New Orleans, LA 70175.

Date Revoked: October 5, 1989.

Reason: Failed to maintain a valid surety bond.

License Number: 2899

Name: Ghaleb P. Ghannoun dba central Shipping Services.

Address: 21483 Crozier Ave. Boca Raton, FL 33428.

Date Revoked: October 12, 1989.

Reason: Failed to maintain a valid surety bond.

License Number: 3098.

Name: Con Services International, Inc.

Address: 1660 W. 33rd Place, Hialeah, FL 33012.

Date Revoked: October 17, 1989.

Reason: Failed to maintain a valid surety bond.

License Number: 514.

Name: New Era Shipping Co., Inc.

Address: 114 Liberty Street, New York, NY 10006.
 Date Revoked: October 19, 1989.
 Reason: Surrendered license voluntarily.
 Robert G. Drew,
 Bureau of Domestic Regulation.
 [FR Doc. 89-26538 Filed 11-9-89; 8:45 am]
 BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

November 6, 1989.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer: Frederick J. Schroeder—
 Division of Research and Statistics,
 Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)
OMB Desk Officer: Gary Waxman—
 Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Final Approval Under OMB Delegated Authority Of The Implementation Of The Following Report

1. *Report title:* Survey of Currency Handling Practices of Depository Institutions.
Agency form number: FR 3060.
OMB Docket number: 7100-0241.
Frequency: One-time.
Reporters: Commercial banks, savings and loan associations, and credit unions in the U.S.
Annual reporting hours: 1384.
Estimated average hours per response: 1.5.

Number of respondents: 923.
 Small businesses are affected.
 General description of report:

This survey is voluntary [12 U.S.C. 248(d)] and is given confidential treatment [5 U.S.C. 552(b)(4)].
 The survey will provide a general assessment of the costs incurred by depository institutions in the handling of United States paper currency, with particular attention to the effects of currency quality on handling costs. This survey will also determine the probable effects on depository institution

currency handling costs that would be associated with changes in the quality of currency paid out by the Federal Reserve System.

Board of Governors of the Federal Reserve System, November 6, 1989.

William W. Wiles,
 Secretary of the Board.

[FR Doc. 89-26544 Filed 11-9-89; 8:45 am]
 BILLING CODE 6210-01-M

Fleet/Norstar Financial Group, Inc., Providence, RI; Proposal To Conduct Private Placements as Agent of All Types of Securities and Engage in Investment Advisory and Full Service Brokerage Activities

Fleet/Norstar Financial Group, Inc., Providence, Rhode Island, and its wholly-owned subsidiary, Fleet/Norstar New York, Inc., Albany, New York (together "Fleet/Norstar"), have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage through their wholly owned subsidiary, Adams McEntee, Fleet Norstar Securities, Inc., New York, New York ("Company"), in the placement, as agent for issuers, of all types of securities (not including securities that are registered under the Securities Act of 1933), and providing investment advisory services. Fleet/Norstar is proposing that Company will engage in these activities on a nationwide basis.

Fleet/Norstar is currently authorized to engage indirectly in providing discount brokerage services, as well as underwrite and deal in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks are authorized to underwrite and deal in under 12 U.S.C. 24 and 335. Fleet/Norstar is also authorized to engage through Company in underwriting and dealing to a limited extent in commercial paper and certain municipal revenue bonds.

Fleet/Norstar proposes to provide investment advisory services as permitted by 12 CFR 225.25(b)(4), as well as providing investment advisory and brokerage services on a combined basis subject to all of the conditions of 12 CFR 225.25(b)(15), *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988), and *PNC Financial Corp.*, 75 Federal Reserve Bulletin 396 (1989), including brokering and recommending to both institutional and retail customers bank-eligible securities in which Company has a principal's position. Fleet/Norstar has stated that Company

will not trade as principal in this situation with respect to bank-ineligible securities.

Fleet/Norstar has also applied to engage, through Company, in the placement, as agent for issuers, of all types of securities within the following limitations: (i) Company will act only as agent, without recourse, solely upon the order and for the account of clients, and will not assume market risk with respect to the securities being placed; (ii) Company will place securities only with a minimum purchase price that meets the requirements of the Securities and Exchange Commission's ("SEC") Regulation D (17 CFR 230.501-506); (iii) Company will place securities only with a limited number of financially sophisticated institutions and individuals who meet the standards for sophisticated investors contained in the SEC's Regulation D; (iv) Company will not offer securities to the general public or make any general solicitation or advertisement of the securities it places; (v) Company will not simultaneously provide placement services and underwriting services respecting the same securities for the same issuer.

Company and its affiliates will also abide by the conditions numbered 2-16 and 18-20 contained in the Board's Order authorizing Fleet/Norstar to underwrite and deal to a limited extent in certain securities, as if references in such conditions to securities underwritten or distributed and to underwriting and distribution were references to securities privately placed and to private placement, as the context may require. *Fleet/Norstar Financial Group, Inc.*, 74 Federal Reserve Bulletin 819 (1988). See also *Citicorp, J.P. Morgan & Co., Incorporated*, and *Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473, 503 (1987). Fleet/Norstar has also agreed to abide by condition number 17 contained in the Board's Order noted above, in a manner consistent with the Board's recent modification of that condition. *Order Approving Modifications to Section 20 Orders*, 75 Federal Reserve Bulletin _____ (Order dated September 21, 1989).

The Board has not previously determined that the proposed combination of activities is permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking as to be a proper incident thereto." Fleet/Norstar

maintains that the proposed placement activities are closely related to banking because banks generally provide private placement services.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Fleet/Norstar contends that permitting Company to engage in the proposed activities would enhance competition and help make Company a stronger participant in the private placement market. Fleet/Norstar maintains that approval of its proposal would result in increased efficiencies for Fleet/Norstar as well as increased convenience for customers. Furthermore, states Fleet/Norstar, any potential adverse effects or conflicts of interest that might be said to arise from the proposed activities are adequately addressed by the commitments noted above, as well as the disclosure obligations and antifraud provisions of the various federal securities laws, and the anti-tying provisions of various banking and antitrust statutes including the Bank Holding Company Act and the Federal Reserve Act.

Fleet/Norstar further contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), relying on *Securities Industry Ass'n v. Board of Governors*, 807 F.2d 1052 (D.C.Cir. 1986), *cert. denied*, 107 S.Ct. 3228 (1987).

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Boston.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than November 30, 1989.

Board of Governors of the Federal Reserve System, November 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-26543 Filed 11-9-89; 8:45 am]

BILLING CODE 6210-01-M

Ameritrust Corp., et al., Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 27, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. **Ameritrust Corporation**, Cleveland, Ohio; to acquire MInvestment Corp., Dallas, Texas, and its wholly-owned subsidiaries, MTrust Corp., National Association, Dallas, Texas; MSecurities Corp., Dallas, Texas, and Houston, Texas; MRealty Corp., Dallas, Texas, and Houston, Texas, and MPetroleum Corp., Dallas, Texas, and thereby engage in trust company activities pursuant to § 225.25(b)(3); investment advisory activities pursuant to § 225.25(b)(4); real

estate appraisal activities pursuant to § 225.25(b)(13); and arranging real estate equity financing pursuant to § 225.25(b)(14) of the Board's Regulation Y.

2. **PNC Financial Corp.**, Pittsburgh, Pennsylvania; through BHC Holding, Inc., Philadelphia, Pennsylvania, a 19.97 percent owned subsidiary of Provident National Investment Corporation, a wholly-owned subsidiary of PNC; to acquire Lomas Securities USA, Inc., Houston, Texas, and thereby engage in securities brokerage activities pursuant to § 225.25(b)(15); and acting as investment or financial advisor pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. **Donnelly Bancshares, Inc.**, Donnelly, Minnesota; to acquire Farmers & Merchants Insurance Agency, Donnelly, Minnesota, and thereby engage in general insurance agency activities in a town with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Donnelly, Minnesota, and surrounding areas.

Board of Governors of the Federal Reserve System, November 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-26540 Filed 11-9-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices;

Acquisitions of Shares of Banks or Bank Holding Companies; Central Capital Corp

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 27, 1989.

A. Federal Reserve Bank of New York
(William L. Rutledge, Vice President) 33
Liberty Street, New York, New York
10045:

1. *Central Capital Corp.*, Halifax,
Nova Scotia, Canada, and Central
Guaranty Trustco Ltd., Toronto, Ontario,
Canada; to acquire 19.9 percent of the
voting shares of U.S. Trust Corporation,
New York, New York, and thereby
indirectly acquire United States Trust
Company of New York, New York, New
York, and United States Trust Company
of Florida, N.A., Palm Beach, Florida.

B. Federal Reserve Bank of Dallas (W.
Arthur Tribble, Vice President) 400
South Akard Street, Dallas, Texas,
75222:

1. *The Stribling Family Trust*, San
Angelo, Texas; to acquire 20 percent of
the voting shares of Eden Financial
Corporation, San Angelo, Texas, and
thereby indirectly acquire The Eden
State Bank, San Angelo, Texas.

Board of Governors of the Federal Reserve
System, November 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-26541 Filed 11-9-89; 8:45 am]

BILLING CODE 6210-01-M

BMR Financial Group, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice
have applied for the Board's approval
under section 3 of the Bank Holding
Company Act (12 U.S.C. 1842) and
§ 225.14 of the Board's Regulation Y (12
CFR 225.14) to become a bank holding
company or to acquire a bank or bank
holding company. The factors that are
considered in acting on the applications
are set forth in section 3(c) of the Act (12
U.S.C. 1842(c)).

Each application is available for
immediate inspection at the Federal
Reserve Bank indicated. Once the
application has been accepted for
processing, it will also be available for
inspection at the offices of the Board of
Governors. Interested persons may
express their views in writing to the
Reserve Bank or to the offices of the
Board of Governors. Any comment on
an application that requests a hearing
must include a statement of why a
written presentation would not suffice in
lieu of a hearing, identifying specifically
any questions of fact that are in dispute
and summarizing the evidence that
would be presented at a hearing.

Unless otherwise noted, comments
regarding each of these applications
must be received not later than
November 30, 1989.

A. Federal Reserve Bank of Atlanta
(Robert E. Heck, Vice President) 104
Marietta Street NW., Atlanta, Georgia
30303:

1. *BMR Financial Group, Inc.*, Atlanta,
Georgia; to acquire 100 percent of the
voting shares of Meigs County
Bancshares, Inc., Decatur, Tennessee,
and thereby indirectly acquire Meigs
County Bank, Decatur, Tennessee.

2. *Dahlonge Bancorp, Inc.*,
Dahlonge, Georgia; to merge with First
Union Bancorp, Inc., Blairsville, Georgia,
and thereby indirectly acquire First
National Bank of Union County,
Blairsville, Georgia.

B. Federal Reserve Bank of St. Louis
(Randall C. Sumner, Vice President) 411
Locust Street, St. Louis, Missouri 63166:

1. *Hogue Holding Company, Inc.*,
Weiner, Arkansas; to become a bank
holding company by acquiring at least
80 percent of the voting shares of Bank
of Weiner, Weiner, Arkansas.

**C. Federal Reserve Bank of San
Francisco** (Harry W. Green, Vice
President) 101 Market Street, San
Francisco, California 94105:

1. *First Security Corporation*, Salt
Lake City, Utah; to acquire 100 percent
of the voting shares of United Savings
Bank, Salem, Oregon.

Board of Governors of the Federal Reserve
System, November 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-26542 Filed 11-9-89; 8:45 am]

BILLING CODE 6210-01-M

Stichting Amro et al.; Proposal To Act as Riskless Principal in Buying and Selling Securities

Stichting Amro and Amsterdam-
Rotterdam Bank N.V., both of
Amsterdam, the Netherlands, have
applied, pursuant to section 4(c)(8) of
the Bank Holding Company Act (12
U.S.C. 1843(c)(8)) and § 225.23(a) of the
Board's Regulation Y (12 CFR 225.23(a)),
to act as riskless principal in buying and
selling securities through Henry Krieger/
DBI, L.P., New York, New York, in
connection with Henry Krieger/DBI's
securities brokerage activities. See 54
Federal Register 40,521 (1989).
Applicants propose to conduct these
activities on a worldwide basis.

Section 4(c)(8) of the BHC Act
provides that a bank holding company
may, with Board approval, engage in
any activity "which the Board after due
notice and opportunity for hearing has
determined (by order or regulation) to
be so closely related to banking or
managing or controlling banks as to be a
proper incident thereto." The Board has
previously determined that acting as a

riskless principal is closely related to
banking and a proper incident thereto.
Bankers Trust New York Company, 75
Federal Reserve Bulletin _____ 1989)
(Order dated October 30, 1989)
("Bankers Trust"). Applicants have
applied to conduct riskless principal
activities through Henry Krieger/DBI,
L.P. in accordance with the limitations
set forth in Bankers Trust.

Applicants believe the proposed
activity will benefit the public by
resulting in increased convenience to
customers and in increased efficiencies
for Henry Krieger/DBI, L.P.

Any comments or requests for hearing
should be submitted in writing and
received by William W. Wiles,
Secretary, Board of Governors of the
Federal Reserve System, Washington,
DC 20551, not later than November 28,
1989. Any request for a hearing on this
applicant must, as required by § 262.3(e)
of the Board's Rules of Procedure (12
CFR 262.3(e)), be accompanied by a
statement of the reasons why a written
presentation would not suffice in lieu of
a hearing, identifying specifically any
questions of fact that are in dispute,
summarizing the evidence that would be
presented at a hearing, and indicating
how the party commenting would be
aggrieved by approval of the proposal.

This application may be inspected at
the offices of the Board of Governors or
the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve
System, November 7, 1989

Jennifer Johnson,

Associate Secretary of the Board.

FR Doc. 89-26627 Filed 11-9-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Meeting

AGENCY: Food and Drug Administration,
HHS.

ACTION: Notice.

SUMMARY: This notice announces a
forthcoming meeting of a public
advisory committee of the Food and
Drug Administration (FDA). This notice
also summarizes the procedures for the
meeting and methods by which
interested persons may participate in
open public hearings before FDA's
advisory committees.

MEETING: The following advisory
committee meeting is announced:

Anti-Infective Drugs Advisory Committee

Date, time, and place

November 28 and 29, 1989, 8 a.m., Conference Rm. D, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person

Closed presentation of data, November 28, 1989, 8 a.m. to 11:30 a.m.; open committee discussion, 1:30 p.m. to 4:30 p.m.; open public hearing, November 29, 1989, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 10:30 a.m.; closed presentation of data, 10:30 a.m. to 2:30 p.m.; Thomas E. Nightingale, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee

The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in infectious diseases.

Agenda—Open public hearing

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 14, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion

On November 28, 1989, the committee will discuss: (1) The use of fluorophotometry as an endpoint for ocular inflammation; and (2) blepharitis as an indication for ocular quinalones. On November 29, 1989, the committee will discuss treatment of traveler's diarrhea with trimethoprim/sulfamethoxazole.

Closed presentation of data

On November 28, 1989, the committee will discuss trade secret and/or confidential commercial information on new drug application (NDA) 19-879. On November 29, 1989, the committee will review trade secret and/or confidential commercial information on NDA 50-637 and investigational new drug 21,804. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be

available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly

unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably, deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. I), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: November 2, 1989.

James S. Benson,

Acting Deputy Commissioner of Food and Drugs.

[FR Doc. 89-26497 Filed 11-9-89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Reconsideration of Disapproval of New York State Plan Amendment; Hearing

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on December 20, 1989 in New York, New York to reconsider our decision to disapprove New York State Plan Amendment (SPA) 88-4.

Closing Date: Requests to participate in the hearing as a party must be received by the Docket Clerk November 28, 1989.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966-4471.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove the effective date of the dementia provisions of New York State plan amendment (SPA) number 88-4.

Section 1116 of the Social Security Act and 42 CFR part 430 establish Department procedures that provide an

administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

New York SPA 88-4 would revise the methods and standards for determining payment rates for residential health care facilities under the State's resource utilization groups (RUG) long-term care reimbursement methodology. Specifically, this amendment contains four revisions to the RUG long-term care reimbursement methodology. They include: (1) reimbursement for services provided to head-injured patients; (2) reimbursement for services provided to dementia patients; (3) change in the indirect ceiling corridor; and (4) continuation of the patient review instrument (PRI) process. The State of New York has requested an effective date of January 1, 1988. The issue in this matter is whether New York's requested effective date of January 1, 1988 for the dementia provisions in SPA 88-4 violates the requirements of Federal regulations at 42 CFR 430.12(c), 42 CFR 447.253(f) and 42 CFR 447.205.

Federal regulations at 42 CFR 430.12(c) require a State plan to be amended to reflect new or revised Federal statutes, regulations, policy interpretations and court decisions or material change in any phase of State law, organization, policy, or State agency operation. However, in accordance with Federal regulations at 42 CFR 447.253(f), the Medicaid agency must comply with the public notice requirements in § 447.205 when it is proposing significant changes to its methods and standards for setting payment rates for inpatient hospital or long-term care facility services. Section 447.205(d) requires that the notice be published before the proposed effective date of the change. Section 447.205 (c)

and (d) set forth additional requirements regarding the content and publication of the notice.

The State's letter dated March 28, 1988, to Mr. William Toby, New York Regional Administrator, provided a list of the publication dates of the various changes contained in this amendment. Specifically, the change in the indirect ceiling corridor was published on September 2, 1987. Provisions concerning the reimbursement of services provided to head-injured patients were published on October 28, 1987. On December 30, 1987, the State published a notice concerning the continuation of the PRI process. Provisions concerning the reimbursement of services provided to dementia patients were published on January 20, 1988. However, the State requested an effective date of January 1, 1988, for this amendment.

In a letter to the State requesting additional information on this amendment dated May 19, 1988, HCFA advised New York that since the provisions concerning reimbursement for dementia patients were not published until January 20, 1988, the earliest possible effective date for the dementia provisions was January 21, 1988, and not January 1, 1988, as proposed. In the State's response dated April 26, 1989, the State supported its request for a January 1, 1988, effective date for the dementia provisions based on the notice of emergency adoption, which was filed with the Secretary of the State of December 31, 1987. The State contends that this filing of the notice of emergency adoption constitutes effective public notice on December 31, 1987, rather than January 20, 1988, the date on which the notice was actually published in the State register. HCFA disagrees with the State's position. Federal regulations at § 447.205(d)(1) require that the notice actually be published *before* the proposed effective date of the change. Similarly, § 447.205(d)(2) requires that the notice appear as a public announcement in a State register or a newspaper. Because the actual date of publication in the State register was January 20, 1989, HCFA believes the effective date cannot be until January 21, 1988.

The plan amendment was submitted by the State of New York on October 6, 1988, together with assurances and related rate information. The State published public notice which met the requirements of 42 CFR 447.205 for all provisions except the dementia provisions prior to January 1, 1988. Public notice of the dementia provisions

was not published until January 20, 1988. Accordingly, HCFA approved this amendment with an effective date of January 1, 1988 for all provisions other than the dementia provisions. HCFA approved the dementia provisions with an effective date of January 21, 1988, the day following the publication of the State's notice.

The notice to New York announcing an administrative hearing to reconsider the disapproval of the effective date of the dementia provisions of its State plan amendment reads as follows:

Mr. Cesar A. Perales,
Commissioner, New York Department of
Social Services, 40 North Pearl Street,
Albany, New York 12242

Dear Mr. Perales: I am advising you that your request for reconsideration of the decision to disapprove the effective date of the dementia provisions of New York State plan amendment 88-4 was received on October 5, 1989.

This amendment would revise the methods and standards for determining payment rates for residential health care facilities under the State's resource utilization groups (RUG) long-term care reimbursement methodology. Specifically, this amendment contains four revisions to the RUG long-term care reimbursement methodology. They include: (1) reimbursement for services provided to head-injured patients; (2) reimbursement for services provided to dementia patients; (3) change in the indirect ceiling corridor; and (4) continuation of the patient review instrument process. The State of New York has requested an effective date of January 1, 1988.

The issue in this matter is whether New York's requested effective date of January 1, 1988 for the dementia provision of SPA 88-4 violates the requirements of Federal regulations at 42 CFR 430.12(c), 42 CFR 447.253(f) and 42 CFR 447.205.

I am scheduling a hearing on your request to be held on December 20, 1989 at 10 a.m. in Room 238, 26 Federal Plaza, New York, New York. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed in 42 CFR Part 430. I am designating Mr. Stanley Krostas as the presiding officer.

If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966-4471.

Sincerely,

Louis B. Hays,
Acting Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: November 3, 1989.

Louis B. Hays,
Acting Administrator, Health Care Financing
Administration.

[FR Doc. 89-26569 Filed 11-9-89; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-100-07-6332-02; GPO-037]

Travel Restrictions; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of travel restrictions for the North Umpqua Trail and adjacent areas on the Public Lands, Roseburg District, Oregon.

SUMMARY: The North Umpqua Trail is closed to motorized travel on Bureau of Land Management lands from Swiftwater Bridge to Fox Creek except for emergency and maintenance use. Pedestrian, equestrian and non-motorized mountain bike travel is authorized.

Maintenance or emergency use of motorized vehicles on the North Umpqua Trail shall be made only with the approval of the District Manager, Area Manager or their authorized representative.

The only other exception shall be for electric wheel chair travel by the physically disabled where such travel is possible and prudent.

Additionally, BLM lands south of the North Umpqua River and west of forest Road No. 26-3-1.1 in section 1, T. 26 S., R. 3 W., and E½NE¼, section 11, T. 26 S., R. 3 W., W.M., are closed to motorized vehicle use and travel by horse and mule.

DATE: These travel restrictions shall be effective December 1, 1989, and shall remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: North Umpqua Resource Area Manager, Bureau of Land Management, 777 NW Garden Valley, Roseburg, OR 97470. Telephone (503) 672-4491.

SUPPLEMENTARY INFORMATION: These travel restrictions are being established in order to reduce damage to the North Umpqua Trail and to cultural resources along the North Umpqua River on lands administered by the Roseburg District of the Bureau of Land Management. Authority for these travel restrictions are contained in CFR title 43, chapter 8340, parts 8340.0-8, subparts 8341, 8341.1(c) and 8341.2(a).

Persons who fail to comply with the provisions of this closure may be subject

to the penalties provided in 43 CFR 8340.0-7 and 43 CFR 9262.1 which include a fine not to exceed \$1,000.00 and/or imprisonment not to exceed 12 months.

Dated: November 3, 1989.

James A. Moorhouse,
District Manager.

[FR Doc. 89-26554 Filed 11-9-89; 8:45 am]

BILLING CODE 4310-33-M

[OR 020-4410-10; GPO-0-028]

Notice of Availability of Draft Resource Management Plan and Environmental Impact Statement; Three Rivers Planning Area, Burns District, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: Notice is hereby given of the availability of the Draft Three Rivers Resource Management Plan/Draft Environmental Impact Statement (RMP/EIS) for 1.7 million acres of public land and federal subsurface mineral estate administered by BLM within Harney, Grant, Lake and Malheur Counties in eastern Oregon.

SUPPLEMENTARY INFORMATION: This land use plan focuses on the principles of multiple use and sustained yield as prescribed by section 202 of FLPMA. The plan directs future resource condition objectives, resource and land use allocations, and specific management actions on BLM-administered lands within the Three Rivers Resource Area. Decisions conveyed through the plan are expected to be in effect for a period of 15 to 20 years.

The Draft RMP/EIS utilizes a range of five alternatives. These alternatives are: (a) Emphasize Natural Values; (b) Emphasize Natural Values with Commodity Production; (c) Preferred; (d) Emphasize Commodity Production with Natural Values (this is also the "No Action" or Continuation of Present Management Alternative); and (e) Emphasize Commodity Production. The Preferred Alternative was developed to represent the best estimate of an optimum multiple use mix of land management commitments for these BLM-administered lands. Under the Preferred Alternative, the BLM proposes improvement of water quality on 115 miles of stream; average annual timber harvests of 578 MBF from 8,263 acres of commercial forestland; forage allocations of 139,851 AUMs for livestock, 5,808 AUMs for wild horses

and burros, and 7,800 AUMs for big game (competitive forage only); improvement in wetland, aquatic and playa habitat; aggressive management of special status plant and animal species; administration of 17,176 acres as Special Recreation Management Areas; designation of 5.4 miles and 1,730 acres for inclusion in the National Wild and Scenic Rivers System as a Wild River; retention of 17,456 acres, and addition of 43,539 acres as ACECs. A total of 38,523 acres of public land would be considered for disposal through exchange or sale over the planning period; provisions would be made for mineral exploration and development; and air, soil and recreation resources would be protected. This document also serves as the draft environmental impact statement requirement for the Wild and Scenic River(s) Act.

DATES AND ADDRESSES: The Three Rivers Draft RMP/EIS 90-day public review and comment period will end on February 1, 1990. BLM encourages interested or affected parties to provide comments. Comments are most useful when they address one or more of the following: (1) errors in the analysis that has been performed; (2) new information that would have a bearing on the analysis; (3) a substantive new alternative not within the range of alternatives considered; (4) need for clarification; and (5) misinformation that may have been utilized and could affect the outcome of the analysis. Interested parties who wish to submit written comments are requested to send them to: Three Rivers RMP/EIS, Bureau of Land Management, HC 74-12533, Highway 20 West, Hines, Oregon 97738. Two informal public meetings have been scheduled to receive comments on the Draft RMP/EIS. They will be held December 4, 1989 at 7 p.m. at the Burns District Office, Hines, Oregon; and December 6 at 7 p.m. at the Bend Riverhouse Motor Inn, Bend, Oregon. All substantive comments received during the 90-day comment period will be analyzed and considered in the preparation of the Three Rivers Proposed RMP/Final EIS.

FOR FURTHER INFORMATION CONTACT: Jay Carlson, Planning Team Leader, Bureau of Land Management, Burns District, telephone (503) 573-5241.

Dated: October 24, 1989.

Donald R. Cain,

Associate District Manager.

[FR Doc. 89-26568 Filed 11-9-89; 8:45 am]

BILLING CODE 4310-33-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercompany Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercompany hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Cooper Industries, Inc., and Ohio Corporation, 1001 Fannin, P.O. Box 4446, Houston, Texas 77210.

2. Wholly owned subsidiaries which will participate in the operation and State of Incorporation.

Wagner Electric Corporation, a Delaware Corporation.

B. 1. Parent corporation and address of principal office: Powell-McClellan Lumber Company, Inc., P.O. Box 7430, 3200 Lafayette Boulevard, Norfolk, Virginia, 23509.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation: Colonial Block of Norfolk, Inc., incorporated in the Commonwealth of Virginia.

Noreta R. McGee,

Secretary.

[FR Doc. 89-26557 Filed 11-9-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40

U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of

Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determinations; Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume State and page number(s).

Volume II

Texas:

TX89-52	p.1136g
	p.1136H
TX89-53	p.1136i
	p.1136j

Modifications to General Wage Determination; Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Florida:

FL89-15 (Jan. 6, 1989)	p. 135, p. 136
FL89-17 (Jan. 6, 1989)	p. 141, p. 142

Massachusetts: MA89-1 p. 371, p. 373 (Jan. 6, 1989).

Rhode Island: RI89-1 (Jan. 6, 1989). p. 1023, p. 1024

Tennessee:

TN89-1 (Jan. 6, 1989)	p. 1077, p. 1078, p. 1079
TN89-4 (Jan. 6, 1989)	p. 1089, p. 1091

Volume II

Iowa: IA89-1 (Jan. 6, 1989) p. 21, p. 23

Illinois:

IL89-9 (Jan. 6, 1989)	p. 151, pp.152-153
IL89-11 (Jan. 6, 1989)	p. 161, pp. 164-166

New Mexico: NM89-4 p. 772a, p. 772b (Jan. 6, 1989).

Ohio: OH89-3 (Jan. 6, 1989). p. 809, pp. 810-811

Oklahoma:

OK89-1 (Jan. 6, 1989)	p. 913, pp. 914-915
OK89-2 (Jan. 6, 1989)	p. 917, pp. 918-919

Volume II

California: CA89-4 (Jan. 6, 1989). p. 69, pp. 70, 73, 77-78

North Dakota:

ND89-1 (Jan. 6, 1989)	p. 223, p. 224
ND89-5 (Jan. 6, 1989)	p. 240a, p. 240b

Washington:

WA89-1 (Jan. 6, 1989)	p. 363, pp. 364-371, 373
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WA89-2 (Jan. 6, 1989)	p. 389, pp. 392, 394
WA89-9 (Jan. 6, 1989)	p. 427, pp. 428-430

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Act". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 3rd day of November 1989.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 89-26385 Filed 11-9-89; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council; Notice of Meetings and Agenda

The Fall meetings of committees of the Labor Research Advisory Council will be held on November 28, 29, and 30.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Tuesday, November 28, Room 2437—General Accounting Office, Building—441 G Street, NW., Washington, DC

9:30 a.m.—Committee on Prices and Living Conditions

1. Office of Field Operations, overview
2. Status Reports
 - a. International prices
 - b. Producer prices
3. Medical care (continued)
4. Other business

1 p.m.—Cognitive Lab Demonstration

(Council members will be invited to participate in testing a new Consumer Expenditure Survey questionnaire.)

2 p.m.—Committee on Employment and Unemployment Statistics

1. Status of the budget situation for labor force statistics
2. Redesign of the Current Population Survey
3. Business Establishment List project
4. Changes in the mass layoff report program
5. Legislation affecting job vacancy statistics
6. Other business

Wednesday, November 29

9:30 a.m.—Committee on Wages and Industrial Relations, Room S-2217 Frances Perkins Building

1. Review of work in progress
2. White-Collar Pay program: 1989 survey results and plans for the 1990 survey
3. Highlights from the 1988 Employee Benefits Survey and plans for the 1990 survey
4. Employment Cost Index: A change in the base year
5. Other business

1:30 p.m.—Committee on Foreign Labor and Trade, Room S-2217, Frances Perkins Building

1. Comparative measures of GDP per capita and per employed person
2. Comparisons of manufacturing hourly compensation
3. Comparisons of labor force, employment, and unemployment

2:30 p.m.—Committee on Productivity, Technology, and Economic Growth—Room S-2217, Frances Perkins Building

1. The newly revised projections for the labor force and employment to the year 2000

Thursday, November 30

9:30 a.m.—Committee on Occupational Safety and Health Statistics—Room S-2217, Frances Perkins Building

1. 1988 annual survey results
2. Program redesign, status report
 - a. Pilot projects
 - b. Guidelines
 - c. Illnesses
 - d. Fatalities
 - e. Fiscal Year 1990 funding
3. Work injury reports
4. Supplementary data system
5. Other business

The meetings are open. It is suggested that persons planning to attend as observers contact Henry Lowenstern, Executive Secretary, Labor Research Advisory Council on (Area Code 202) 523-1327.

Signed at Washington, DC this 3rd day of November 1989.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 89-26563 Filed 11-9-89; 8:45 am]

BILLING CODE 4510-24-M

Pension and Welfare Benefits Administration

Employee Retirement Income Security Act Annual Reports; Compliance With Reporting Requirements

The U.S. Department of Labor will not reject until 1990 annual financial reports by employee benefit plans solely because administrators report realized and unrealized gains or losses using an historical cost approach rather than current value approach.

The reports, called the Form 5500 Series, are required to be filed by employee benefit plans covered under the Employee Retirement Income Security Act of 1974 (ERISA).

The department's decision is in response to a request from the American Bankers Association (ABA) concerning the inability of many banks and other employee benefit service providers to provide plan administrators the information in accordance with clarifying instructions to the 1988 Form 5500.

The instructions accompanying the 1988 form clarify that realized and unrealized gains and losses are to be determined against the current value of the assets as of the beginning of the plan year, as carried forward from the end of the prior plan year.

In a letter to the department, the ABA indicated that many banks and other employee benefit service providers have been determining realized and unrealized gains and losses on the basis

of historical cost. Because of programming changes required to accommodate the instructions and the due date of the annual reports, many banks and service providers, according to the ABA, will be unable to provide employee benefit plan clients with the information necessary to comply.

The ABA also expressed concern that many filers may be unaware of the instructions and inadvertently report incorrect information. The ABA has asked the department not to issue deficiency notices for the 1988 annual report and further requested that for subsequent years the historical cost approach be permitted in determining realized and unrealized gains and losses.

In the department's response, dated July 3, 1989, Robert J. Doyle, director of regulations and interpretations for the Pension and Welfare Benefits Administration, noted that "it has long been the view of the department that, consistent with the current value reporting requirements of the Form 5500, realized and unrealized gains and losses are required to be determined against the current value of the assets of the plan as of the beginning of the plan year." He also stressed that the department continues to believe that the reporting of this information on a current value basis provides more accurate data concerning the investment performance of a plan during the plan year.

"For this reason," he added, "the department does not intend to modify the current value reporting requirements applicable to determining realized and unrealized gains and losses."

However, in view of the apparent confusion concerning the reporting of this information and the fact that the 1988 forms were not published in the *Federal Register* until March 1, the department decided it would not reject annual report filings for the 1989 and 1988 plan years solely because the administrator of a plan determines realized and unrealized gains and losses using an historical cost approach consistent with that utilized by the plan for the 1987 plan year annual report.

For plan years beginning on or after January 1, 1990, all plan administrators will be expected to comply with the instructions to the Form 5500 relating to the use of current value.

FOR FURTHER INFORMATION CONTACT:
Gloria Della, telephone (202) 523-8921.

Signed at Washington, DC, this 1st day of November, 1989.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration.

[FR Doc. 89-26564 Filed 11-9-89; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Maine Yankee Atomic Power Co.; Maine Yankee Atomic Power Station; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-309]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-36 issued to Maine Yankee Atomic Power Company (the licensee) for operation of the Maine Yankee Atomic Power Station located in Lincoln County, Maine.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would modify the Technical Specifications to reflect current knowledge of the Reactor Pressure Vessel (RPV) fast neutron fluences (E greater than 1.0 Mev.) and materials properties. The proposed amendment would also incorporate revised 10 CFR 50 Appendix G limits. Included are changes for:

- Revised fluence projections which reflect results of measurements and flux reduction achieved in refueling cycle 8.
- Revised damage predictions which reflect the results of measurements and the application of Regulatory Guide (R.G.) 1.99, Revision 2.
- Revised Pressure-Temperature (P/T) limits developed following the requirements of 10 CFR 50 Appendix G.

The proposed action is in accordance with the licensee's application for amendment dated December 2, 1988.

The Need for the Proposed Action

The proposed change to the TS will incorporate the guidance provided in Revision 2 to Regulatory Guide 1.99, "Radiation Embrittlement of Reactor Vessel Materials," which became effective May 1988 and was discussed in Generic Letter 88-11, "NRC Position on Radiation Embrittlement of Reactor Vessel Materials and its Impact on Plant Operations."

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions provide up-to-date pressure/temperature limits for the operation of the reactor coolant system during heatup, cooldown, criticality, and hydrotest. These limits provide protection against pressurized thermal shock of the reactor vessel, thereby contributing to safety. The proposed changes do not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involve systems located within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on January 23, 1989 (54 FR 3167). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Maine Yankee Atomic Power Station, dated July 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 2, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Dated at Rockville, Maryland, this 3rd day of November 1989.

For the Nuclear Regulatory Commission,
Richard H. Wessman,

Director, Project Directorate I-3, Division of
Reactor Projects I-II, Office of Nuclear
Reactor Regulation.

[FR Doc. 89-26565 Filed 11-9-89; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on November 16-18, 1989 in Room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the *Federal Register* on October 31, 1989 (54 FR 45829). This revision is necessary due to an additional agenda item on Saturday, November 18.

Saturday, November 18, 1989

8:30 a.m.—12:30 p.m.: Preparation of ACRS Reports to the NRC (Open)—The Committee will discuss proposed ACRS reports to the NRC regarding items considered during this meeting and the scope/nature of the NRC regional activities.

Procedures for the conduct of and participation in ACRS meetings were published in the *Federal Register* on September 27, 1989 (54 FR 39594). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the

Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492-8049), between 7:30 a.m. and 4:15 p.m.

Dated: November 6, 1989.

John C. Hoyle,
Advisory Committee Management Officer
[FR Doc. 89-26567 Filed 11-9-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-263]

Northern States Power Co., Issuance of Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has issued Amendment No. 72 to Facility Operating License No. DPR-22, issued to the Northern States Power Company (the licensee), which revised the Technical Specifications for operation of the Monticello Nuclear Generating Plant, located in Wright County, Minnesota. The amendment is effective as of the date of issuance.

The amendment (1) revises the reactor vessel pressure vs. temperature curves for consistency with Revision 2 of Regulatory Guide 1.99; (2) adds requirements for augmented inservice inspection of piping susceptible to intergranular stress corrosion cracking; and (3) revises the requirements for the periodic Type A containment integrated leak rate test to permit the use of the

mass point test method approved by the Commission in a change to 10 CFR part 50, Appendix J, as published in the Federal Register on November 15, 1988 (53 FR 45891).

The licensee's application for the amendment dated March 31, 1989, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings, as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing in connection with this action was published in the Federal Register on June 1, 1989 (54 FR 23553). No request for hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to this action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see (1) the application for the amendment dated March 31, 1989, (2) Amendment No. 72 to License No. DPR-22, (3) the Commission's related Safety Evaluation and (4) the Environmental Assessment dated October 11, 1989 (54 FR 71701). All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 2nd day of November 2, 1989.

For the Nuclear Regulatory Commission,
William O. Long,

Project Manager, Project Directorate III-1,
Division of Reactor Projects—III, IV, V &
Special Projects, Office of Nuclear Reactor
Regulation.

[FR Doc. 89-26566 Filed 11-9-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Information Collection Submitted to OMB for Clearance

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, (44 U.S.C. chapter 35), this notice announces a request submitted to OMB for expedited clearance of a new form, OPM Form 1584, the U.S. Office of Personnel Management 1989 Geographic White-Collar Compensation Survey. The proposed form is to be used for a one-time occupational compensation survey conducted by Mercer, Meidinger, Hansen, Inc., under contract with OPM for research on alternative pay systems to the General Schedule. A sample of private and State and local government employers in 13 Metropolitan Statistical Areas will be surveyed to test survey techniques and to obtain current salary and bonus data by occupation in high, medium, and low cost cities. OPM plans to use the survey results as part of its effort to design systems for implementing a more market-sensitive pay system. Approximately 2,000 establishments are expected to complete the questionnaire form, and the form takes, on average, 4 hours to complete, for a total burden of 8,000 hours. For copies of this proposal, call Lawrence Dambrose (632-0199).

OPM is requesting that OMB clear OPM Form 1584 in 14 days. Following this notice please see a draft copy of the survey questionnaire, cover letter, and descriptions of 3 of the jobs to be surveyed.

DATE: November 23, 1989.

ADDRESSES: Send or deliver comments to: Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara L. Fiss (202) 632-4346.

U.S. Office of Personnel Management,
Constance Berry Newman,
Director.

Draft

United States
Office of Personnel Management,
Washington, D.C. 20415

Company address
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Dear Employer: The United States Office of Personnel Management (OPM) would appreciate your help and participation in a

special compensation survey which is part of an important Federal personnel research project.

Currently, the Federal government pays its 1.4 million white-collar workers—in hundreds of occupations and locations—on a single national pay scale. The inflexibility of this monolithic pay structure increasingly handicaps Federal recruitment and retention efforts. As a result, OPM is studying the possibility of a more market-sensitive Federal pay system. The compensation survey being conducted under contract with Mercer Meidinger Hansen, Inc. (MMH), will test a new mix of survey jobs in specific geographic locations. This information will be invaluable in helping OPM to evaluate new approaches for future Federal pay reforms. Your participation will help assure broad representation of your local labor market.

MMH will be responsible for data collection, processing and analysis. All responses will be kept strictly confidential by MMH. A summary of the survey results will be provided to all participants at no cost.

We would appreciate your completing the enclosed survey questionnaire and returning it to MMH by ~~xxxx~~ (date). Please call the MMH Project Coordinator, Carl Bruno, at (312) 902-7822 with any survey questions. If you would like to learn more about the OPM pay research and reform initiative, feel free to contact Felicia Nathan Schwenk or Ruth O'Donnell of my staff at (202) 632-7184.

Thank you for your assistance in this important research effort.

Sincerely,

XXXXXXXXXXXXXXXXXXXX

Barbara L. Fiss, CCP,

Assistant Director for Pay and Performance.

Draft

The U.S. Office of Personnel
Management 1989 Geographic White-
Collar Compensation Survey
Questionnaire—Participation Deadline:
January 12, 1990 (William M. Mercer
Meidinger Hansen Incorporated)

Why a Survey?

For many jobs the amount of pay received is a function of what you do (job content) and where you do it (location). As employers compete aggressively for talent across the country, the objective not to over or under-pay is paramount. Traditionally, many employers recognize geographic pay differences only for clerical and technical personnel. There is a growing concern that geographically-based pay programs should include many exempt positions, including professional, administrative and first-line supervisory jobs.

As a result, the need for accurate and reliable data is critical, today more than ever. The U.S. Office of Personnel Management (OPM) and Mercer Meidinger Hansen have decided to conduct a total cash compensation

survey in 13 locations for a selected sample of professional, administrative and technical jobs.

What Locations Will Be Surveyed?

This year's survey will collect data on the following metropolitan areas:

- San Francisco
- Los Angeles
- Atlanta
- Boston
- San Antonio
- Dayton
- Anchorage
- Washington
- Baltimore
- San Diego
- St. Louis
- Albuquerque
- Honolulu

What Types of Jobs Will Be Surveyed?

Within the Professional,

Administrative and Technical occupations, 20 job families have been selected. Included will be an entry-level position, 2 more senior positions and a first-line supervisor. Examples of the survey job families include:

- Attorney
- Budget Analyst
- Computer Specialist
- Electrical Engineer
- Auditor
- Civil Engineer
- Personnel Specialist
- Registered Nurse
- Purchasing
- Quality Assurance

What Data Will Be Collected?

Simple basic cash compensation and background information will be asked. Included will be:

- base salary
- bonus

- salary range
- years of experience
- educational background
- degree of match

When Will the Survey Be Conducted and Report Published?

The survey questionnaires will be mailed in December and must be returned by January 12, 1990. The report will be mailed in March, 1990.

What type of Output Will I Receive?

Job Code: 017

Job Title: Attorney

Job Description: Responsible for handling a variety of moderately complex assigned legal projects. Typically has four to eight years experience after receiving law degree. Normally reports to a Managing Attorney.

SUMMARY OF ALL REPORTED SALARIES (IN \$000's)—PROFESSIONAL

	Firm count	Incumbent Count	Low	25th percentile	50th percentile	Average	75th percentile	High
Albuquerque.....	15	17	31.8	34.6	40.0	41.6	48.3	60.1
Anchorage.....	10	12	46.4	50.2	58.6	60.0	66.5	71.3
Atlanta.....	30	40	40.1	46.1	51.2	52.7	55.8	69.2
Baltimore.....	42	65	41.2	44.3	48.6	49.8	53.9	68.1
Boston.....	56	78	44.6	48.6	53.7	55.1	58.6	72.0
Dayton.....	27	39	39.4	45.3	50.1	51.7	54.3	68.4
Honolulu.....	12	15	48.8	55.6	61.8	63.9	67.8	77.6
Los Angeles.....	61	82	50.3	58.7	63.4	64.6	68.2	79.4
San Antonio.....	22	29	34.6	36.9	41.6	42.9	45.3	59.8
San Diego.....	39	53	43.9	47.4	52.9	54.8	56.2	68.4
San Francisco/Oakland.....	48	61	50.0	56.6	62.7	65.5	69.4	80.2
St. Louis.....	31	47	41.0	47.5	55.5	57.1	63.8	75.1
Washington D.C.....	46	75	48.4	53.8	58.4	59.0	65.7	78.6

Degree of Match: Less Than
Description—7.0%; Very Close
Match—83.0% More Than
Description—10.0%

Summary of All Reported Ranges and Bonuses

Job Code:
Job Title:

SUMMARY OF ALL REPORTED RANGES AND BONUSSES

	No firms reporting range	Salary range			Average Comps Ratio	No. incumbents (bonus-reported)	Average bonus	Average total comp	Average No. emps. supervised	Percent eligible for bonus	Avg. bonus as percent of base
		Minimum	Midpoint	Maximum							
Albuquerque.....	13	30.2	48.4	66.6	97.6	3	6.4	42.9	0	30.6	12.6
Anchorage.....	8	35.6	54.0	72.4	95.3	3	5.6	63.7	0	35.2	14.7
Atlanta.....	22	40.0	55.3	70.6	94.8	10	7.1	55.9	0	34.7	11.9
Baltimore.....	30	38.4	54.1	69.9	101.7	20	7.5	52.4	0	38.4	15.4
Boston.....	41	42.9	58.3	73.8	93.5	25	7.8	57.3	1	42.6	18.9
Dayton.....	19	36.5	65.5	69.2	94.6	12	6.0	53.8	0	47.8	20.3
Honolulu.....	8	45.0	62.7	80.5	102.5	4	6.2	67.2	0	45.4	19.2

How Much Does It Cost?

The survey report will be free to all participants.

Any Questions?

If you have any questions about the survey, please contact either Ruth

O'Donnell at OPM (202) 632-7184 or Joyce Cain at Mercer Meidinger Hansen, (800) 333-3070.

About OPM

The Office of Personnel Management (OPM) was created by the Civil Service Reform Act of 1978 when most of the activities of the former United States Civil Service Commission were transferred to OPM. Its Director is appointed by and reports directly to the President.

OPM is responsible for government-wide personnel policy, guidance and assistance in the full range of human resource activities—recruiting, compensation and benefits, employee development and training, performance management, ethics and program evaluation. It administers a merit system for Federal employment that includes recruiting, examining, training, and promoting people on the basis of their

knowledge and skills, regardless of their race, religion, sex, political influence, or other nonmerit factors. The Office's role is to ensure that the Federal Government provides an array of personnel services to applicants and employees. Through a range of programs designed to develop and encourage the effectiveness of the Government employee, the OPM supports Government program managers in their personnel management responsibilities and provides benefits to more than 2 million employees and to another 2 million annuitants.

As part of its broad directive, OPM is conducting research to reform the General Schedule pay system used for more than 1.4 million white-collar workers in more than 400 occupations throughout the world. A major thrust of

this research is to design options for a more market-sensitive pay system, in lieu of the current practice of paying nationwide rates for most jobs. It is vital that OPM obtain survey information for selected Metropolitan Statistical Areas (MSA) as quickly as possible so staff research can be completed and a course of action recommended to the President.

I will participate. Please send me the questionnaire for the U.S. Office of Personnel Management 1989 Geographic White-Collar Compensation Survey.

Name: _____
Title: _____
Organization: _____
Street Address: _____
City: _____
State: _____
Zip: _____
Telephone: () _____

BILLING CODE 6325-01-M

**General Instructions for the
U.S. Office of Personnel Management
1989 Geographic White Collar Compensation Survey** OPM

DRAFT

This is the participation package for the 1989 U.S. Office of Personnel Management Compensation Survey. Instructions for completing the Individual Job Data Sheets are included. When you have finished completing the survey, please use the following checklist before submitting your Individual Job Data Sheets for processing.

Checklist: Have you . . .

- ☐ completed all items with an asterisk (*) (e.g., company name, address, name and title of person providing information, etc)?
- ☐ completed the appropriate sections for each location you are reporting?
- ☐ reproduced your participation package for your own files?

Mail your completed package to:

WILLIAM M. MERCER MEIDINGER HANSEN, INCORPORATED
THE NATIONAL SURVEY GROUP
1417 LAKE COOK ROAD
DEERFIELD, IL 60015

Participation Deadline is: January 12, 1990

If you have any questions on completing this form, please call Joyce Cain at Mercer Meidinger Hansen on (312) 948-7400, extension 2455.

Please complete this questionnaire only for employees at **this** facility. If you have other facilities in this metropolitan area, please duplicate this package and complete one for **each** facility. Please enter the appropriate address of **each** facility in the Company Information item below.

ORGANIZATION DATA			
*1. Company Information		01	
Company Name (22-57)		*2. What is the total number of jobs matched in this survey? (22-24)	
Address		*2a. What is the total number of employees matched in this survey? (25-28)	
City (58-78)		*2b. Using the Standard Industrial Classification listing at the end of your questionnaire, please indicate the industry to which you belong. Please supply all five digits requested (29-33)	
State (79-80)	ZIP Code		
*1a. Individual Supplying Information: (This is the person Mercer Meidinger Hansen will contact to resolve any problem areas.)		02	
Name (22-45)		*2c. What is the total number of employees at this location? (59-62)	
Title (46-66)		*2d. What is the total employment of this company overall? (65-70)	
Telephone Number Including Area Code (67-76)		3. Using the following numeric codes, indicate in the box at right the type of organization. (71)	
Extension (77-80)		1—Private sector 3—Local government 2—State Government 4—Non-profit organization	
For Survey Use Only		4. Using the following numeric codes, indicate in the box at right the level of the organizational unit. (72)	
MSA		1—Headquarters 3—Plant 5—State Capital 7—Other 2—Regional 4—Sales Office 6—Local government	

Form Approved:
O.M.B. No. 3208-XXXX

OPM Form 1584 (10-89)

*Instructions for Completing Individual Job Data Sheets***Draft**

Please read these instructions before providing individual salary rates in this section.

Job Matching

No company's organization structure or job descriptions will match exactly the jobs defined in a compensation survey. However, you should match your jobs as closely as possible so the results will accurately reflect pay for work of a similar nature and level. Do not match based on job title only. Use the survey job description as the final test of the job match.

Special Guidance on Matching Supervisory Jobs

Although journeyman jobs and first-line supervisors are being separately surveyed, some of the journeyman survey jobs mention possible supervisory duties. Match your job to the journeyman survey job if it is primarily nonsupervisory in nature. For example, jobs that are mainly independent workers with incidental supervisory duties, jobs that supervise only one or two workers, and jobs that function more as leaders than supervisors should be matched to the appropriate journeyman level. If your job functions primarily as a full-fledged, first-time supervisor of an assigned staff, it should be matched to the supervisory survey job.

Data Reporting

Once you have matched your jobs satisfactorily, report the information requested below. **Note:** Mercer Meidinger Hansen can accept computer runs with compensation data if the runs have all necessary information and are clearly labelled. Attach to the appropriate job data sheet if additional data are also provided on that sheet.

1. Enter the job title and job code of the survey job to which you are matching your job. The job codes are on the survey job descriptions and the back side of the Individual Job Data Sheet.

2. Annual Salary Range—If you have a formal salary rate structure for the job, enter the established annual salary

range (Minimum, Mid-Point, Maximum). Report to the nearest whole dollar. Should you have more than one salary range for any job, duplicate the data sheet. Enter the other salary range(s) on the separate sheet(s) listing the employees in each range on the appropriate page.

Note: If you have multiple ranges for the same company job in an area or business unit, you may be reporting more than one job level. Review your job matches and use additional forms for reporting other jobs and levels.

3. Enter the total number of employees in this job. The number should agree with total of the employees reported in the Compensation Data section of the form and on the Individual Job Data Sheet continuation form (if used) or on any computer data sheets if supplied separately.

4. Indicate whether the employees in this job are eligible for an incentive or merit bonus. Provide this even if you cannot report bonus data in the Compensation Data section of the form.

5. Report the typical educational requirements or equivalents for this job at this level. (The amount of education each employee has may vary. Report the normal or usual educational requirements for the job and level.)

6. Report the minimum years of experience required for the job at this level. (Again, the amount of experience may vary with employee. Report that the minimum amount of experience required for this job and level.)

7. Report how well your job matches the survey job. If your job is substantially the same, enter "2". If the job requires somewhat more skill, effort, or responsibility, enter "3". If it requires somewhat less enter "1". **Do not match your job to the survey job if your job is substantially different.**

8. Enter the job title your organization uses for this job.

9. If the job is a supervisory job, refer to the First-Line Supervisory Job Descriptions and enter the appropriate profiled code.

10. Enter the job code of the survey job that most closely matches the level typically supervised. If the employee supervises subordinates at various levels, report the job code of the highest

subordinate level with a substantial number of employees.

Compensation Data

1. Enter the annual base salary as of December 1, 1989, for each employee you have matched to this job. Report data in whole dollars. If you have a 401(k) plan, report the rate before voluntary pay reductions.

2. Enter the total amount of merit or incentive bonuses, if any, received by each employee during the 12 month period ending December 1, 1989. Report data in whole dollars. Report only merit or incentive bonuses. Do not include profit sharing or deferred compensation payments.

3. If this is a supervisory job, enter the number of subordinates reporting to the employee.

4. Use the Job Data Information Sheet continuation form as necessary to report information for all employees in your job matching this survey job.

Note: Your organization may have several employees matched to a survey job who receive identical base salaries, bonuses, and (if first-line supervisors) supervise the identical number of subordinates. Rather than repeating the entries to reflect each of these employees, you may record the total number of employees with these identical characteristics in the shaded area and enter the other data only once in the blocks to the right.

Public Burden Information

Public burden reporting for this collection of information is estimated to vary from 2 hours to 6 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Reports and Forms Management Officer, U.S. Office of Personnel Management, 1900 E Street, N.W., Room 6410, Washington, D.C. 20415; and to the Office of Management and Budget, Paperwork Reduction Project (3208-XXXX), Washington, D.C. 20503.

BILLING CODE 6325-01-M

DRAFT**Individual Job Data Sheet**Form Approved:
O.M.B. No. 3208-XXXX

1. Job Title		Job Code (15-17)	31
2. Annual Salary Range		7. Compared to the survey job this job has: Enter the appropriate number. (22)	32
Minimum (23-28)	\$,	1. Less responsibility	
Mid-Point (30-35)	\$,	2. About the same responsibility	
Maximum (37-42)	\$,	3. More responsibility	
3. What is the total number of incumbents reported for this job? (43-46)	,	8. Title given this job in your organization (23-50)	32
4. Are incumbents in this job eligible for a bonus? Enter Y for YES or N for NO. If NO, leave bonus column below blank. (47)			
5. What are the normal educational requirements or equivalents for this job at this level? Enter appropriate number. (63)			
1. High school or equivalent	4. Undergraduate degree		
2. High school plus advanced vocational	5. Master's degree		
3. Associate's degree	6. Doctorate	9. Supervisory Profile Code. Please refer to the instructions to select appropriate code. (77)	32
6. What are the minimum years of experience required for this job at this level? Enter full years. (64-65)		10. Job Code of level typically supervised. Refer to the instructions for the appropriate code. (78-80)	32

COMPENSATION DATA

Line Number (22-24)	Number of Employees with this Annual Base Salary and Bonus	Current Annual Base Salary (26-31)	Amount of Bonus (33-38)	If This is a Supervisory Position, No. of Employees Reporting to Incumbent (41-43)	33
001	,	\$,	\$,		
002	,	\$,	\$,		
003	,	\$,	\$,		
004	,	\$,	\$,		
005	,	\$,	\$,		
006	,	\$,	\$,		
007	,	\$,	\$,		
008	,	\$,	\$,		
009	,	\$,	\$,		
010	,	\$,	\$,		
011	,	\$,	\$,		
012	,	\$,	\$,		

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SURVEY JOB CODES AND TITLES

[Please see the individual job descriptions for job definitions and supervisory profile codes.]

Job title	Entry level	Journeyman I	Journeyman II	Journeyman III	First line supervisor
Accountant.....	100	101	102	N/A	901
Auditor.....	103	104	105	N/A	902
Personnel Specialist.....	106	107	108	N/A	903
Attorney.....	109	110	111	N/A	904
Buyer (off-shelf).....	112	113	114	N/A	905
Buyer (specialized).....	N/A	115	116	N/A	906
Computer Specialist.....	117	118	119	120	907
Electrical and Electronics Engineer.....	121	122	123	124	908
Civil Engineer.....	221	222	223	224	909
Aerospace Engineer.....	321	322	323	324	910
Other Professional Engineers.....	421	422	423	424	911
Registered Nurse.....	125	126	127	N/A	912
Nursing Assistant.....	128	129	130	N/A	913
Engineering Technician.....	131	132	133	N/A	914
Purchasing Clerk/Assistant.....	134	135	136	N/A	915
Internal Revenue Agent.....	137	138	139	N/A	916
Management Analyst.....	140	141	142	N/A	917
Quality Assurance Specialist.....	143	144	145	N/A	918
Budget Analyst.....	146	147	148	N/A	919
Tax Examiner.....	149	150	151	N/A	920

Please use the above codes to complete questions 1 and 10 on the Individual Job Data Sheets. The Supervisory Profile codes for question 9 are shown in the job descriptions.

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Standard Industrial Classifications

General Category and Type Code

01 Manufacturing-Non Durable Goods

- 200 Food & Kindred Products
- 210 Tobacco Manufacturing
- 220 Textile Mill Products
- 230 Apparel & Other Products made from Fabric
- 260 Paper & Allied Products
- 270 Printing
- 280 Chemicals & Allied Products
- 281 Pharmaceuticals-Ethical
- 282 Cosmetics & Toilet Preparations
- 290 Petroleum Ref. & Related Products
- 300 Rubber & Misc. Plastic Products
- 310 Leather & Leather Products
- 390 Miscellaneous

02 Manufacturing-Durable Goods

- 240 Lumber & Wood Products, except furniture
- 250 Furniture & Fixtures
- 320 Stone, Clay & Glass Products
- 330 Primary Metals
- 340 Fabricated Metal Products
- 350 Machinery, except Electrical
- 360 Electrical Machinery & Equipment
- 368 Electronic Data Processing Equip.
- 370 Trans. Equip. (Ground, Water & Air)

- 380 Professional, Scientific, Photographic & Optical Goods; Watches & Clocks
- 390 Miscellaneous

03 Transportation

- 400 Railroad Transportation
- 410 Local & Suburban Transit & Interurban Pass.
- 420 Motor Freight Transp. & Warehousing
- 440 Water Transportation
- 450 Air Transportation
- 460 Pipeline Transportation
- 470 Transportation Services

04 Utilities

- 481 Telephone
- 482 Telegraph
- 491 Electric Companies & Systems
- 492 Gas Companies & Systems
- 493 Combination Gas & Elec. Cos. Sys.
- 494 Water Supply
- 495 Sanitary Services
- 496 Steam Companies & Systems
- 497 Irrigation Systems

05 Wholesale/retail trade—Wholesale

- 501 Motor Vehicles & Auto Equip.
- 502 Drugs, Chemicals & Allied Products
- 503 Dry Goods & Apparel
- 504 Groceries
- 505 Farm Products-Raw Materials
- 506 Electrical Goods
- 507 Hardware, Plumbing & Heating Supplies
- 508 Machinery, Equipment & Supplies
- 509 Miscellaneous

05 Wholesale/retail trade—retail

- 520 Bldg. Materials, Hardware & Farm Equip.
- 530 General Merchandise
- 540 Food
- 550 Automotive Dealers & Gas Service Stations
- 560 Apparel & Accessories
- 570 Furniture & Home Furnishings
- 580 Eating & Dining Places
- 590 Misc. Retail Stores

06 Finance

- 600 Banking
- 601 Federal Reserve Banks
- 602 Commercial & Stocks Savings Banks
- 603 Mutual Savings Banks
- 604 Trust Cos. (No Deposit Banking)
- 605 Closely Related Services (Foreign Exchange, Currency Exchange)
- 610 Credit Agencies Other Than Banks
- 611 Rediscount & Fin. Insts. (not Banks)
- 612 Savings & Loan Associations
- 613 Agricultural Credit Unions
- 614 Personal Credit Institutions
- 615 Business Credit Institutions
- 616 Loan Correspondents & Brokers
- 620 Security & Commodity Brokers, Dealers & Exchanges
- 670 Holding & Other Investment Companies

07 Insurance

- 630 Insurance Carriers
- 631 Life Insurance

- 632 Accident & Health Insurance
- 633 Fire, Marine & Casualty Insurance
- 635 Surety Insurance
- 636 Title Insurance
- 639 Insurance Carriers, Other
- 640 Insurance Agents, Brokers & Service
- 08 Service-Profit**
 - 700 Hotels & Rooming Houses
 - 720 Personal Services
 - 730 Business Services
 - 731 Advertising Agencies & Services
 - 732 Consumer Credit & Collection Agencies
 - 733 Duplication, Mailing List & Stenographic Services
 - 734 Building Services
 - 735 Private Employment Agencies
 - 736 Business & Management Consulting Services
 - 737 Data Processing Service Bureaus, Software Companies, Time Sharing Companies
 - 738 Accounting, Auditing & Bookkeeping services
 - 739 Business Services Other
 - 750 Automobile Repair, Auto Serv. & Garages
 - 760 Misc. Repair Services
 - 780 Amusement & Recreation Services (except Motion Pictures)
 - 790 Motion Pictures
 - 791 Publishing-Newspapers
- 792 Publishing-Books and Periodicals
- 793 News Syndicate
- 794 Radio and Television Broadcasting
- 800 Medical, Dental & Other Health Services
- 810 Legal Services
- 891 Engineering & Architectural Services
- 892 Agricultural Services
- 899 Miscellaneous
- 09 Service-Non-Profit**
 - 800 Medical Dental & Other Health Serv.
 - 830 Museums, Art Galleries, Botanical & Zoological Gardens
 - 860 Non-Profit Membership Organizations
 - 892 Educational & Scientific Research Agencies
 - 895 Religious Organizations
 - 899 Miscellaneous
- 10 Educational Services**
 - 821 Elementary & Secondary Schools
 - 822 Colleges, Universities, Professional Schools, Jr. Colleges
 - 823 Libraries
 - 824 Correspondence & Vocational Schools
 - 829 Educational Services, Other
- 11 Government**
 - 910 Federal Government
 - 920 State Government
 - 930 Local Government
 - 940 International Government
- 12 Construction and Mining**
 - 100 Construction
 - 101 General Contractors-Residential
 - 102 General Contractors-Commercial
 - 103 General Contractors-Highway & Bridge
 - 104 Water, Sewer, Pipe Line, Communication & Powerline Construction
 - 105 Misc. Construction
 - 110 Mining
 - 111 Metal and/or Mineral Ore Mining
 - 112 Coal Mining
 - 113 Quarry Excavation
 - 114 Misc. Mining
- 13 Oil and Gas**
 - 120 Drilling and/or Exploration
- 14 Real Estate**
 - 650 Real Estate
 - 660 Combination of Real Estate, Insurance, Loans Law Offices
- 15 Other**
 - 999 (Please Specify)

JOB FAMILY MATRIX—ENGINEERING TECHNICIAN

Engineering Technician—Entry Level (Job code 131)	Engineering Technician—Journeyman I (Job code 132)	Engineering Technician—Journeyman II (Job code 133)	Engineering Technician—First Line Supervisor (Job code 914)
As a trainee, initially works under close supervision and provides semi-professional technical support for engineers. Performs simple, routine tasks such as one or more of the following: assembles or installs equipment requiring simple wiring or soldering; operates test equipment, performs tensile or similar tests; gathers and maintains records of engineering data; plots data and draws graphs. As employee gains experience, follows standard procedures to construct simple equipment or parts, conduct a variety of standard tests, and extract and process engineering data.	This is a full Journeyman level. Under general supervision, provides semi-professional technical support for engineers. Performs and may plan non-routine assignments of substantial variety and complexity. May construct experimental or prototype models, conduct experiments or tests analyze data and apply conventional engineering practices to prepare schematics, designs, or specifications. May be assisted by lower level technicians.	Under general supervision, performs nonroutine and complex assignments of a semiprofessional nature in accordance with objectives and approaches outlined by professional engineer. Typical duties may include one or more of the following: design, development or construction of equipment; evaluation of equipment performance and equipment redesign; preparation of layouts, detailed specifications, parts, estimates and procedures; evaluation of adequacy of drawings and design. May train or be assisted by less experienced technicians.	As a first-line supervisor, exercises both technical and personnel management responsibilities. Supervises at least 3 technical/clerical employees, although staff may be quite large. Staff may include quasi-supervisory leaders, reviewers or coordinators and/or a single supervisory deputy. Categorize jobs at Profile L (limited) as Profile B (broad). <i>Profile L</i> Plans and schedules work on a weekly monthly, or project basis to meet deadlines and handles priorities.

JOB FAMILY MATRIX—ENGINEERING TECHNICIAN—Continued

Engineering Technician—Entry Level (Job code 131)	Engineering Technician—Journeyman I (Job code 132)	Engineering Technician—Journeyman II (Job code 133)	Engineering Technician—First Line Supervisor (Job code 914)
		Journeyman II represents positions assigned the more difficult journeyman level duties and responsibilities. It does not encompass even higher level positions (e.g., "experts" in a narrow aspect of a particular field of engineering) which exist in the occupation.	Decides how to assign and review workload to achieve acceptable quantity and quality of input. Informs subordinates about personnel programs; tell superiors of hiring needs recommends promotions, rates performance, oversees attendance and leave, resolves informal complaints, provides on-the-job training. Profile B Within limits, also has authority to change work organization to improve economy and efficiency. Also defines performance standards and issues internal work instructions. Also takes formal actions such as requesting recruitment, selecting candidates, resolving formal grievances, and disciplinary cases. Team leaders, second-line supervisors, and supervisory positions primarily compensated for nonsupervisory work (e.g., personal performance of higher level duties) should <i>not</i> be matched.

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JOB FAMILY MATRIX—PERSONNEL SPECIALIST

Personnel Specialist—entry level (Job code 106)	Personnel Specialist—Journeyman I (Job code 107)	Personnel Specialist—Journeyman II (Job code 108)	Personnel Specialist—First Line Supervisor (Job code 903)
Initially, works under close supervision and learns to apply personnel management principles, procedures and techniques. Degree of supervision is gradually lessened as employee gains experience. Performs routine duties in <i>one or more of the following areas</i> : job analysis/evaluation, salary and benefit administration, recruitment and placement, employee development, employee relations and services, equal employment opportunity and labor relations. Difficulty of assignments gradually increases as employee gains experience. (This is a professional level position; clerical and para-professionals not included.) This is the trainee and developmental level which, depending upon the entry worker's background and abilities, typically continues for one or two years. More advanced subjourneyman positions (e.g., those performing assignments of fairly limited scope and complexity with substantial independence) are excluded.	This is a full journeyman level. Applies technical knowledge, skills and judgment to solve relatively complex technical problems in <i>one or more of the following areas</i> : Job analysis/evaluation, salary and benefit administration, recruitment and placement, employee development or relations, equal employment opportunity and labor relations. Advises management on issues requiring broad personnel knowledge and/or highly technical skills. May render final decisions on assigned personnel matters. May assist in evaluating operation of personnel programs against established objectives. Typical duties include: analyzing, evaluating, and defining difficult exempt jobs; planning and conducting broad compensation surveys and recommending pay and benefit adjustments; developing training plans and procedures for an organizational segment; participating in complex employee-management relations issues such as controversies, poor morale, and high turnover; or developing plans and procedures for labor negotiations in a moderately complex organization.	Applies technical knowledge, skills and judgement to solve unusually complex or unprecedented problems or provides comprehensive advice management on complex technical problems/issues in <i>one or more of the following areas</i> : Job analysis/evaluation, salary and benefit administration, recruitment and placement, employee development opportunity, and labor relations. May independently evaluate personnel programs against established objectives and recommend improvements. Typical duties include: participating in the development of personnel policies and procedures; analyzing, evaluating, and defining unusually difficult jobs, recruiting candidates for one-of-a-kind jobs; participating in employee-management relations where the underlying issues are difficult to identify; planning and administering a comprehensive employee development program; or performing labor relations assignments for a large conglomerate.	As a first-time supervisor, exercises both technical and personnel management responsibilities. Typically supervises about 5 to 30 professional/technical workers, but no fewer than 3 such employees. (Staff may also include additional clerical and blue-collar subordinates.) Supervisory work normally includes work planning and delegation, performance monitoring, providing technical counsel, and evaluating end results. Is usually also responsible for recommending hires and promotions, resolving complaints, effecting minor disciplinary actions, and arranging training. Positions are categorized as Profile 1 (the norm) or Profile 2 (atypical). Profile 1 jobs have no subordinate supervisors, other than a possible single deputy. Profile 2 jobs exercise somewhat greater supervisory authorities, directing their staff through work/team leaders or other quasi-supervisory subordinates. Full second-line supervisors, team leaders and supervisory positions primarily compensated for nonsupervisory work (e.g., superjourneyman/expert duties) should <i>not</i> be matched.

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JOB FAMILY MATRIX—ACCOUNTANT

Accountant—Entry Level (Job code 100)	Accountant—Journeyman I (Job code 101)	Accountant—Journeyman II (Job code 102)	Accountant—First Line Supervisor (Job code 901)
Initially, works under close supervision and learns to apply the principles, theories and concepts of accounting to a specific system. Degree of supervision is gradually lessened as employee gains experience. Assists in the preparation of financial statements by checking for completeness, internal accuracy, conformity with standard accounting classifications. Reconciles reports and financial data with existing statements, prepares charts and tables, computes standard ratios. May prepare simple statements requiring little analysis. Difficulty of assignments gradually increases as employee gains experience. (This is a professional level position; clerical assistants not included). This is the trainee and developmental level which, depending upon the entry worker's background and abilities, typically continues for one or two years. More advanced subjourneyman positions (e.g., those performing assignments of fairly limited scope and complexity with substantial independence) are excluded.	This is a full journeyman level. Under general supervision, applies well-established accounting principles, theories, concepts, and practices to a wide variety of difficult problems. May supervise day-to-day operation of an entire accounting system of moderate complexity, a major segment of a larger and more complex accounting system, or a narrow/specialized segment of a very complex system. Recommends refinements to accounting structure, ledgers, account classifications, and reporting systems. Determines accounting treatment of financial transactions. Assists in recommending solutions to complex problems. May supervise professional accountants.	Under general supervision, applies accounting principles, theories, concepts, and practices to the solution of problems for which no clear precedent exists or performs work which is of greater than average responsibility due to the nature/magnitude of the assignment. Resolves complex technical and managerial problems. Interprets implications of financial data and reports for management. Moderate to significant responsibility for accounting system design and development. Supervises day-to-day operation of an entire accounting system of moderate complexity, a major segment of a larger and more complex system or a narrow, specialized segment of a very complex accounting system. Often supervises professional accountants. Journeyman II represents positions assigned the more difficult journeyman level duties and responsibilities. It does not encompass even higher level positions (e.g., "senior"/"expert"/"super-journeyman") which exist in the occupation.	As a first-line supervisor, exercises both technical and personnel management responsibilities. Typically supervises about 5 to 30 professional/technical workers, but no fewer than 3 such employees. (Staff may also include additional clerical and blue-collar subordinates.) Supervisory work normally includes work planning and delegation, performance monitoring, providing technical counsel, and evaluating end results. Is usually also responsible for recommending hires and promotions, resolving complaints, effecting minor disciplinary actions, and arranging training. Positions are categorized as Profile 1 (the norm) or Profile 2 (atypical). Profile 1 Jobs have no subordinate supervisors, other than a possible single deputy. Profile 2 Jobs exercise somewhat greater supervisory authorities, directing their staff through work/team leaders or other quasi-supervisory subordinates. Full second-line supervisors, team leaders and supervisory positions primarily compensated for nonsupervisory work (e.g., superjourneyman/expert duties) should not be matched.

[FR Doc. 89-26572 Filed 11-9-89; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-17201; File No. 812-7339]

American Life/Annuity Series, et. al.

November 3, 1989.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: American Life/Annuity Series ("AL"), American Variable Insurance Series ("VI") and Capital Research and Management Company ("CRMC") (referred to collectively as the "Applicants").

Relevant 1940 Act Sections: Applicants seek an order of the Commission under section 17(b) of the 1940 Act approving certain purchase and sale transactions between AL and VI involving AL's portfolio securities.¹ The

proposed transactions will enable shares of VI to be substituted, as the underlying investment for certain variable annuity contracts (the "Contracts") offered by Nationwide Life Insurance Company ("Nationwide") and Transamerica Life Insurance and Annuity Company ("Transamerica"), for shares of AL (the "Substitutions").

Filing Date: The Application was filed on September 12, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application or ask to be notified if a hearing is ordered. Any request must be received by the Commission by 5:30 p.m. on November 28, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest either personally or by mail, and also send a copy to the Secretary of the Commission, along with proof of service by affidavit or, in the case of attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, the Commission, 450 5th Street NW., Washington, DC 20549. Applicants, 333 South Hope Street, 52nd Floor, Los Angeles, California 90071.

FOR FURTHER INFORMATION CONTACT: Wendell M. Faria, Staff Attorney, at

(202) 272-3450 or Clifford E. Kirsch, Acting Assistant Director, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION:

Following is a summary of the Application; the complete Application is available for a fee from either the Public Reference Branch (if applying in person) or the Commission's commercial copier at (800) 231-3282 (in Maryland, (301) 283-4300). Notice of the application was published in the SEC Docket on October 10, 1989 (44 SEC Docket 1415). The Notice was not, however, published in the Federal Register.

Applicants' Statements and Representations

1. AL and VI are open-end diversified management investment companies organized as Massachusetts business trusts. Their registration statements on Form N-1A are on file with the Commission (File Nos. 811-4939 and 811-3857, respectively). CRMC is an investment adviser registered under the Investment Advisers Act of 1940; it is organized as a Delaware corporation.

2. Shares of AL currently serve as the underlying investment for certain Contracts issued by Nationwide and Transamerica. Because of AL's small asset size and high level of expenses, AL intends to discontinue making shares

¹ Applicants also requested an exemption from Section 17(a) pursuant to section 6(c) of the 1940 Act. This request, however, will be withdrawn by an amendment to the Application.

available for use with Contracts as soon as practicable, subject to receipt of the Order requested herein and receipt by Nationwide and Transamerica of Orders from the Commission pursuant to section 26(b) of the 1940 Act. Thereafter, shares of VI will be substituted for shares of AL.² AL has five funds (or investment portfolios) which are substantially identical to five of VI's funds (or investment portfolios). CRMC serves as investment adviser to both AL and VI and is not affiliated with either Nationwide or Transamerica. AL will cease operations shortly after the Substitutions are completed.

3. The proposed Substitutions in effect will result in an exchange of an interest in AL for an interest of equal value in VI. To facilitate such exchange, AL will sell all of its portfolio securities to VI for a cash receivable. AL shares representing this asset will in turn be used by Transamerica and Nationwide to purchase shares of VI. All transactions will be made at the current market price of the securities involved.

4. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above from purchasing any security or other property from such registered investment company.

5. Each Applicant may be deemed to be an affiliated person or affiliated person of an affiliated person of each other Applicant or certain other Applicants under section 2(a)(3) of the 1940 Act, and the proposed transactions may be deemed to entail one or more purchases or sales of securities or property between and among certain Applicants. Therefore, an exemption from section 17(a) of the 1940 Act, pursuant to section 17(b) of the 1940 Act, may be required.

6. Section 17(B) of the 1940 Act provides that the Commission may grant an Order exempting transactions prohibited by section 17(a) of the 1940 Act upon application if evidence establishes that:

(a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(b) The proposed transaction is consistent with the investment policy of

each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and

(c) The proposed transaction is consistent with the general purposes of the 1940 Act.

7. Applicants represent that the terms of the proposed transactions including the consideration paid or received, are reasonable and fair and do not involve overreaching on the part of any person.

8. The investment objectives, policies, and restrictions of the AL and VI funds involved in the transaction are substantially identical. Thus, the purchase and sale transactions are consistent with the objectives, policies and restrictions of VI. Further, the Substitutions will result in an equitable division of assets among the Contracts, which is consistent with the policies of AL and VI.

9. The Substitutions are consistent with the general purposes of the 1940 Act, as enunciated in the Findings and Declaration of Policy in section 1 of the 1940 Act. The proposed transactions do not present any of the issues or abuses that the 1940 Act is designed to prevent. Owners of the Contracts will be fully informed of the terms of the Substitutions through Supplements to the Prospectuses of the Contracts and AL, and owners will have an opportunity to reallocate investments following the Substitutions.

10. Applicants also note in support of their request for an Order under section 17(b) that the proposed transactions fall within the intent of, but not the literal requirements of Rule 17a-7 under the 1940 Act. That Rule generally exempts from section 17(a) certain purchase and sale transactions between registered investment companies or separate series of registered investment companies, which are affiliated persons of each other, provided certain enumerated conditions are met. Applicants represent that, as a condition to any Order under section 17(b), they will comply with the conditions set forth in subparagraphs (b), (c), (d), and (e) of Rule 17a-7, namely, that:

(b) The transactions will be affected at the independent current market price of the securities;

(c) The transactions are consistent with the policy of AL and VI and the Contracts involved in the Substitutions, as recited in the applicable registration statements and reports filed under the 1940 Act;

(d) No brokerage commission, fee (except for customary transfer fees), or other remuneration will be paid in connection with the transactions; and

(e) The Boards of Trustees of AL and VI, including a majority of the Trustees who are not interested persons, (1) have adopted procedures pursuant to which such purchase or sale transactions may be affected, which are reasonably designed to provide that all the conditions of paragraphs (b) through (d) of Rule 17a-7 are complied with, and (2) will determine that the purchases or sales are affected in compliance with such procedures.

11. Applicants cannot, however, meet the conditions of subparagraphs (a) and (f) of Rule 17a-7. Subparagraph (a) requires the transaction be "for no consideration other than cash payment." Applicants cannot comply because the consideration involved in the transaction will be a cash receivable rather than cash. Subparagraph (f) requires AL and VI to (1) maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph (e) of Rule 17a-7, and (2) maintain and preserve for a period of not less than six years, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, the terms of the purchase or sale transaction, and the information or materials upon which the determinations described in paragraph (e) of Rule 17a-7 were made. Since subparagraph (f) contemplates that each party will have continuing operations after a transaction pursuant to Rule 17a-7 (in order to be able to satisfy the record-keeping requirements) AL will not be able to comply. However, VI represents that it will comply with such requirements. Applicants submit that lack of a cash payment and the fact that AL is discontinuing operations after the Substitutions are completed, under the circumstances, do not give rise to the type of potential abuse Rule 17a-7 was designed to guard against. Rather, Rule 17a-7 was designed to permit investment companies to sell securities between themselves at current market prices without necessarily incurring costs, including brokerage costs, to the detriment of Contract owners. Here the transactions involved will be affected at current market price, and thus, in substance, are of the type ordinarily exempted by Rule 17a-7.

Applicants' Conclusion

Applicants submit, for all of the reasons stated herein, that their exemptive request meets the standards set out in section 17(b) of the 1940 Act

² The Substitutions are discussed more fully in the Applications for Orders pursuant to section 26(b) of the 1940 Act that have been filed with the Commission by Nationwide and Transamerica.

and that an Order should therefore be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-26524 Filed 11-9-89; 8:45 am]

BILLING CODE 6010-01-48

[Release No. 35-24980]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 2, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 27, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Public Service Company of Oklahoma (70-6327)

Public Service Company of Oklahoma ("PSO"), P.O. Box 201, Tulsa, Oklahoma 74102, an electric utility subsidiary company of Central and South West Corporation, a registered holding company, and PSO's mining subsidiary company, Ash Creek Mining Company ("Ash Creek"), have filed a post-effective amendment to their application-declaration filed pursuant to sections 6(a), 7, 9(a), 10 and 12 of the Act and Rules 43 and 54 thereunder.

By order dated January 21, 1988 (HCAR No. 24562), PSO's authorization to finance Ash Creek was extended through December 31, 1989 in the maximum principal amount of \$2,972,500 outstanding at any one time. PSO and Ash Creek estimate that Ash Creek's indebtedness to PSO at December 31, 1989 will be approximately \$2,950,000. PSO now proposes to extend its authorization to finance Ash Creek through December 31, 1991 and to increase the maximum principal amount of such financing to \$4 million outstanding at any one time.

New England Energy Incorporated (70-7055)

New England Energy Incorporated ("NEEI"), 25 Research Drive, Westborough, Massachusetts 01582, the fuel supply subsidiary of New England Electric System ("NEES"), a registered holding company, has filed a post-effective amendment to its application filed pursuant to Sections 9(a) and 10 of the Act.

In 1974, the Commission authorized NEEI's participation in oil and gas exploration and development activities in order to provide a fuel supply for NEES system companies (NCAR NO. 18635, October 30, 1974). NEEI has participated in these activities principally through its partnership ("Partnership") with Samedan Oil Corporation ("Samedan"), a subsidiary of Noble Affiliates, Inc., a nonaffiliate company. The Partnership agreement ("Agreement") provides for capital contributions by the partners to be used to pay the costs and expenses of the Partnership. The Agreement, as amended February 5, 1985, provides for two phases of operation, Phase I, which expired on December 31, 1986, and Phase II, which commenced on January 1, 1987. Under Phase II, NEEI elected not to participate in new oil and gas prospects initiated by Samedan after December 31, 1986, but remains obligated to pay its share of expenses for exploration, development and production of Phase I prospects acquired on or before December 31, 1987.

By order dated December 29, 1988 (HCAR No. 24795), NEEI was authorized, through December 31, 1989, to contribute up to \$40 million (including approximately \$15 million which will relate to Pre-1984 prospects and \$15 million to Post-1984 prospects) to the Partnership for exploration and development of oil and gas prospects initiated by the Partnership prior to December 31, 1988.

NEEI now seeks to extend its authorization, through December 31, 1991, and to contribute up to \$50 million

(including approximately \$35 million which will relate to Pre-1984 prospects and \$15 million to Post-1984 prospects) to the Partnership for exploration and development of oil and gas prospects initiated by the Partnership prior to December 31, 1988. In addition, NEEI requests authority to invest in the Partnership, through December 31, 1991, an additional \$10 million in order to provide for contingencies, for a total authorization of \$60 million.

New England Energy Incorporated (70-7685)

New England Energy Incorporated ("NEEI"), 25 Research Drive, Westborough, Massachusetts 01582, a wholly owned, fuel procurement and transportation subsidiary of New England Electric System ("NEES"), a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act.

In 1980, NEEI and Keystone Shipping Co. ("Keystone") formed a joint venture, New England Collier Company ("NECCO"), which owns a self-unloading, coal-fired collier ("Energy Independence"). The Commission has previously authorized NEEI's 51% participation in NECCO (HCAR No. 21919, February 13, 1981), the financing arrangements made by NECCO in connection with construction of the Energy Independence (HCAR No. 22146, August 3, 1981), and the chartering of the Energy Independence by NECCO to New England Power Company ("NEP"), the generation and transmission subsidiary of NEES, for a term of 24 and 1/2 years (HCAR No. 22309, December 9, 1981). Since completion of its construction in 1983, the Energy Independence has been engaged in the transportation of coal to generating stations of NEP.

In 1987, NEEI received a demand for arbitration from Keystone alleging that NEEI had breached its duty, as a joint venturer, concerning the charter hire rates paid by NEP for the Energy Independence. Due to this disagreement among the parties, no charter hire rate has been set for 1988 or 1989. NEP has commenced arbitration against NECCO for determination of the charter hire rates for 1988 and 1989. Pending a decision, NEP has been paying NECCO at an estimated rate.

On October 6, 1989, NEEI, NEP, and Keystone executed and delivered a Settlement Agreement subject to and conditioned upon receipt of all necessary approvals of the U.S. Maritime Administration and the Commission. The Settlement Agreement provides for, among other things, the

termination of the arbitration proceedings and the sale by NEEI to Keystone or its affiliate ("New Owner") of all of NEEI's rights, title and interest in NECCO and the Energy Independence. Under the Settlement Agreement, NEP will charter the Energy Independence under a new time charter for an initial term of 18 years and two months with two one-year optional extensions.

NEEI currently has outstanding with NECCO a loan of \$10 million having an interest rate of 14.9% due July 15, 2008 ("NEEI Loan"). The Commission authorized the NEEI Loan by its order dated September 14, 1987 (HCAR No. 24459). NEEI is requesting authorization from the Commission to amend the terms of the NEEI Loan as part of the settlement of pending arbitrations. Under the proposed Settlement Agreement, the New Owner will assume all of NECCO's obligations under the NEEI Loan. In order to evidence this loan, the New Owner will execute and deliver to NEEI a new Note Agreement and note. The principal amount of \$10 million, interest rate of 14.9%, and maturity date of July 15, 2008, will remain unchanged. NEEI has negotiated additional provisions in the Note Agreement for its benefit and protection including establishment of an escrow fund to assure timely payment of interest and repayment of principal, a restriction on payment of dividends by the New Owner, and security for the loan. The Note Agreement also provides that the New Owner may prepay the loan, in whole or in part, without premium or penalty and that, at the option of the New Owner, the note may be sold to a commercial bank upon payment to NEEI of the outstanding principal amount, together with accrued interest.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-26525 Filed 11-9-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Southern Berkshire Investment Corp.; Issuance of a Small Business Investment Company License

[Application No. 01/01-0348]

On August 8, 1989, a notice was published in the Federal Register (P. 32553) stating that an application has been filed by Southern Berkshire Investment Corporation, with the Small

Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) for a license as a small business investment company.

Interested parties were given until close of business September 8, 1989, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01-0348 on October 25, 1989, to Southern Berkshire Investment Corporation to operate as a small business investment company. (Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.

Dated: November 6, 1989.

Robert G. Lineberry,
Deputy Associate Administrator for
Investment.

[FR Doc. 89-26523 Filed 11-9-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/1323]

Advisory Committee on Historical Diplomatic Documentation; Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet on November 16, 1989, at 9 a.m. in room 1406 of the Department of State.

The Advisory Committee advises the Bureau of Public Affairs, and in particular the Office of the Historian, concerning problems connected with preparation of the documentary series entitled Foreign Relations of the United States and other responsibilities of that Office.

In accordance with section 10(d) of the Advisory Committee Act (Pub.L. 92-463) it has been determined that certain discussions during the meeting will necessarily involve consideration of matters recognized as not subject to public disclosure under 5 U.S.C. 552 b (c)(1), and that the public interest requires that such activities will be withheld from disclosure. The meeting will therefore be closed when such discussions take place from 2 p.m. to 5 p.m. on Thursday, November 16 and all day Friday, November 17.

Persons wishing to attend the open portion of the meeting should come before 9 a.m. on November 16 to the Diplomatic Entrance of the Department of State at 22nd and C Streets, NW., Washington, DC. They will be escorted

to Room 1406 and at the conclusion of the open portion of the meeting escorted back to the Diplomatic Entrance.

Although this notice is published less than fifteen days in advance of the meeting, since complicated arrangements have been made at considerable expense and the Advisory Committee members are not available to convene again in the near future, the meeting will be held on the dates set forth in this notice.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663-1122.

John P. Glennon,

Acting Director, Office of the Historian,
Department of State.

[FR Doc. 89-26747 Filed 11-9-89; 8:45 am]

BILLING CODE 4710-11-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under subpart Q during the Week ended November 3, 1989. The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46582.

Date filed: November 3, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 1, 1989.

Description: Application of Aviateca, S.A. pursuant to section 402 of the Act and subpart Q of the Regulations, requests Reissue or Transfer of Permit issued by the Department in Docket No. 43630 from Empresa to Aviateca, S.A.

Docket Number: 46585.

Date filed: November 3, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 17, 1989.

Description: Conforming Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for amendment of its certificate of public convenience and necessity for Route 137 so as to add Malaysia and Indonesia to segment 9.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-26545 Filed 11-9-89; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Fitness Determination of Trans Executive Airlines of Hawaii, Inc. d/b/a Trans Air

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—order 89-11-4, order to show cause.

SUMMARY: The Department of Transportation is proposing to find Trans Executive Airlines of Hawaii, Inc. d/b/a Trans Air fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than November 20, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: November 3, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-26491 Filed 11-9-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Approval of Noise Compatibility Program Barnstable Municipal Airport, (Hyannis), Barnstable, Massachusetts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Barnstable Municipal Airport Commission, Barnstable, Massachusetts, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150. These findings are made in recognition of the description of federal and non-federal responsibilities in Senate Report No. 96-52 (1980). On January 30, 1989, the FAA determined that the noise exposure maps, submitted by the Barnstable Municipal Airport Commission, under part 150, were in compliance with applicable requirements. On July 27, 1989, the Administrator approved the Barnstable Municipal Airport (HYA) noise compatibility program. Out of the 28 proposed program elements, 23 were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the HYA noise compatibility program is July 27, 1989.

FOR FURTHER INFORMATION CONTACT: John Silva, Federal Aviation Administration, New England Region, Airports Division, ANE-602, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 273-7060.

Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the HYA noise compatibility program, effective July 27, 1989.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR) part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which

measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

(b) Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

(c) Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The Barnstable Municipal Airport Commission submitted to the FAA, on August 31, 1988, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 1985 through

July 1987. The HYA noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 27, 1989. Notice of this determination was published in the Federal Register on February 8, 1989.

The HYA study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on January 27, 1989, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180 day period shall be deemed to be an approval of such a program.

The submitted program contained 28 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective July 27, 1989.

Approval was granted for 23 specific program elements. Five elements were disapproved. Element 7 Voluntary Minimum Night Flights, does not need FAA approval because of its voluntary, informal nature. Elements 8 and 9, pertaining to daytime and nighttime noise limits, were disapproved because of insufficient information. Element 11, a proposal to construct a new taxiway, was disapproved as a noise abatement proposal, since it would not necessarily enable the prohibition of intersection departures. Measure 28, soundproofing a hospital, was disapproved because there is reasonable expectation that implementation of the remainder of the NCP would obviate the need. There is also no rationale in the study for application of a 60 Ldn incompatible use determination for the site, as opposed to FAA's land use guideline of 65 Ldn.

The 23 approved program elements include noise abatement flight tracks, minimum VFR altitudes, use of the NBAA noise abatement procedure, a preferential runway program and related nighttime designated calm wind runway, a nighttime aircraft touch-and-go prohibition, full-length runway departures, addition of a noise attenuation wall to an existing earth berm surrounding a run-up pit and a reduction in the number of hours for use

of the pit, and the establishment of monetary penalties for violations of maintenance run-up procedures.

Approved administrative measures include the establishment of a Noise Abatement Officer position, noise abatement airport signage, pilot education, noise measurement equipment, a complaint response program, a system to track changes in noise exposure over time, update of the official Noise Exposure Map, the establishment of a permanent noise advisory committee, an annual noise report, and a noise abatement policy statement concerning or affirming many of the NCP measures.

Approved land use measures include the establishment of overlay zones and revisions to subdivision regulations, a recommendation to revise the state building code to include regulations for noise level reduction, and a public education program.

FAA's determinations are set forth in detail in a Record of Approval endorsed by the Administrator on July 27, 1989. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the office of the Barnstable Airport Commission, Barnstable, Massachusetts.

Issued in Burlington, Massachusetts on October 17, 1989.

Vincent A. Scarano,
Manager, Airports Division, New England Region.

[FR Doc. 89-26530 Filed 11-9-89; 8:45 am]

BILLING CODE 4910-13-M

Flight Service Station at Minot International Airport Minot, North Dakota

AGENCY: FEDERAL AVIATION ADMINISTRATION (FAA), DOT.

ACTION: Notice of Closing.

SUMMARY: Notice is hereby given that on October 24, 1989, the Flight Service Station (FSS) at Minot, North Dakota was closed. Services to the aviation public in the Minot, North Dakota flight plan area, formerly provided by Minot FSS, are being provided by the automated flight service station (AFSS) at Grand Forks, North Dakota. This information will be reflected in the FAA organization statement the next time it is reissued. [Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.]

Dated: October 27, 1989.

Edward J. Phillips,
Acting Regional Administrator Great Lakes Region.

[FR Doc. 89-26531 Filed 11-9-89; 8:45 am]

BILLING CODE 4910-13-M

Urban Mass Transportation Administration

Environmental Impact Statement for Mass Transit Improvements in the Fremont-South Bay Area of Alameda and Santa Clara Counties, California

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Urban Mass Transportation Administration (UMTA), the Metropolitan Transportation Commission (MTC), and the Santa Clara County Transit District (SCCTD) intend to prepare an Environmental Impact Statement (EIS) for mass transit improvements in the Fremont-South Bay area of Alameda and Santa Clara Counties, California. The UMTA, MTC, and SCCTD will prepare the EIS in conformance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321), the Regulations for Implementing the Procedural Requirements of NEPA, Council on Environmental Quality (40 CFR parts 1500-1508), Environmental Impact and Related Procedures, UMTA (49 CFR part 622), and related statutes and Executive Orders. In addition, in conformance with the Urban Mass Transportation Act of 1964 and UMTA policy, the Draft EIS will be prepared in conjunction with an Alternatives Analysis, and the Final EIS in conjunction with Preliminary Engineering.

The UMTA published a Notice of Intent on September 25, 1986 initiating the Fremont-South Bay Alternatives Analysis and environmental impact assessment. Subsequent scoping efforts and technical work suggested a need to rescop the study to define clearly a set of transportation improvements that could be considered for UMTA capital assistance. The revised study will focus on alternative bus and light rail transit (LRT) improvements in the Tasman corridor. Extensions of Bay Area Rapid Transit District (BART) rail service are not now being considered as alternatives in this study.

FOR FURTHER INFORMATION CONTACT:
Ms. Carmen Clark, Urban Mass Transportation Administration, 211 Main Street, Suite 1160, San Francisco,

California 94105; Telephone: (415) 974-7317.

Scoping

The UMTA, MTC, and SCCTD invite the public and affected Federal, State, and local agencies to participate in determining the alternatives to be evaluated in the EIS and identifying the significant issues related to the alternatives. Written materials describing the rescoping proposal, the proposed alternatives, the expected impact areas, a citizen involvement program, and the preliminary work schedule are being mailed to affected Federal, State, and local agencies and to interested parties on record.

Others may request these scoping materials by calling or writing to:

Mr. Marc Roddin, Tasman Corridor Project Manager, Metropolitan Transportation Commission, Joseph P. Bort MetroCenter, 101 8th Street, Oakland, CA 94607; Telephone: (415) 464-7827; or

Mr. David Minister, Manager for Project Development, Santa Clara County Transportation Agency, P.O. Box 4009, Milpitas, California 95035-2009; Telephone: (408) 299-2362.

The SCCTD and MTC will hold new public scoping meetings to describe the revised scope of the study and receive comments on it. The times, dates, and locations of these meetings are:

Wednesday, November 29, 1989 at 7:00 p.m., City of Sunnyvale, Community Auditorium, 550 East Remington Drive, Sunnyvale, California;

Thursday, November 30, 1989 at 7:00 p.m., Piedmont Hills High School, Multi-Purpose Room, 1377 Piedmont Road, San Jose, California.

At the scoping meetings, SCCTD and MTC staff will present the alternatives to be considered in the continuing analysis and identify the known social, economic, and environmental impacts to be evaluated during the study. Methods for continuing citizen involvement and a revised work schedule will also be discussed. Comments are invited regarding the revised alternatives, the impacts to be assessed, and the evaluation criteria to be used in making a decision. During scoping, comments should focus on these topics and not on an individual preference for a particular alternative. Comments may be made either orally at the meeting or in writing not later than December 29, 1989.

Corridor Description

The Tasman corridor is generally located between Interstate Routes 680 and 880 from the Fremont BART Station

to downtown San Jose and westerly along the vicinity of State Route 237 from Milpitas to the Sunnyvale and Mountain View areas. The corridor's freeways experience peak-period congestion due to commuting associated with the large number of research, manufacturing, and defense jobs located in the corridor. Major commuter travel into and within the corridor includes: (1) East Bay residents commuting to the downtown San Jose area and the "Golden Triangle" area (bounded by I-880 and State Routes 237 and 101), (2) residents of Milpitas and northeast San Jose commuting to the Golden Triangle and Mountain View-Sunnyvale areas, (3) residents of San Francisco and San Mateo County commuting to Lockheed/NASA Ames, GTE, and elsewhere in the Golden Triangle, and (4) residents of central and south San Jose commuting to northern San Jose and the Milpitas and Mountain View-Sunnyvale areas.

Alternatives

The proposed alternatives to be studied originally included extensions of BART service south of the existing Fremont Station and extensions of the Guadalupe Corridor LRT to connect with the BART extension in the east and with the CalTrain commuter rail service in the west at Mountain View or Sunnyvale. The rescoped study will focus on a lower-cost set of express bus and LRT alternatives excluding the BART extensions. The MTC and BART are still evaluating alternative extensions of BART service south of the Fremont Station, but UMTA funding assistance is not programmed for the BART project. The MTC and BART will evaluate the BART extensions in a separate environmental document prepared in compliance with the California Environmental Quality Act. UMTA has determined that the BART project and the project which is the subject of the UMTA EIS are separate projects, each having utility independently of the other project.

The new alternatives proposed for consideration in the UMTA EIS differ from the original set primarily in their cost and the level of service provided to transit users. The alternatives proposed for continuing analysis are: No Action, Transportation System Management (TSM) alternatives, Express Bus/High Occupancy Vehicle (HOV) alternatives, and various extensions of the Guadalupe Corridor LRT. The TSM and Express Bus/HOV alternatives include additional express bus service and the construction of additional ramps and bypass lanes are also included in the Express Bus/HOV alternative. The

proposed extensions of the LRT include an extension east from the existing Guadalupe LRT line along Tasman Drive and Capitol Avenue to I-680 or Milpitas, and an extension west from the existing Guadalupe LRT terminal to Lockheed, Mountain View, or Sunnyvale. The Mountain View or Sunnyvale terminals will provide a direct connection to the CalTrain commuter rail system. All LRT alternatives will include consideration of improved express bus service from the BART terminal in Fremont into Santa Clara County.

Probable Effects

The UMTA, SCCTD, and MTC propose to evaluate in the EIS all significant social, economic, and environmental impacts of the alternatives under consideration. The impacts analyzed will include the increased noise and vibration, residential and business displacements, changes in development patterns and land use, community disruption resulting from the cumulative effect of the other impacts, traffic and parking changes, effects on historic sites, degradation of local air quality and water quality especially near stations and yards, and the disruption of parklands, recreation areas, wetlands, floodplains, ecologically sensitive areas, natural and man-made hazardous materials sites, and the aesthetic quality of the area. These impacts will be evaluated both for the construction period and for the long-term operation of each alternative. Measures to mitigate harm will be explored for any adverse impact identified.

Construction of any alternative other than the No-Build will require increased capital outlays for several years and are expected to increase transit service and patronage with associated increases in transit operating and maintenance costs. The alternatives are expected to have no significant impact on navigable waterways, coastal zones, energy use, or regional air quality.

During scoping, comments on the probable effects should focus on the completeness of the proposed set of impacts to be evaluated. Other impacts or criteria judged relevant to decision-making should be identified.

Dated: November 3, 1989.

Louis F. Mraz, Jr.,

Acting Western Area Director.

[FR Doc. 89-26494 Filed 11-9-89; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Date: November 6, 1989.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, P.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0047.

Form Number: IRS Form 990 and Schedule A (Form 990).

Type of Review: Resubmission.

Title: Return of Organization Exempt from Income Tax Under section 501(c) (except black lung benefit trust or private foundation) of the Internal Revenue Code or section 4947(a)(1) Trust.

Description: Form 990 is needed to determine that Internal Revenue Code section 501(a) tax-exempt organizations fulfill the operating conditions of their tax exemption. Schedule A (Form 990) is used to elicit special information from section 501(c)(3) organizations. IRS uses the information from these forms to determine if the filers are operating within the rules of their exemption.

Respondents: Non-profit institutions.

Estimated Number of Respondents/Recordkeepers: 327,953.

Estimated Burden Hours Per Response/Recordkeeping:

	Form 990	Schedule A
Recordkeeping	83 hrs., 28 min.	39 hrs., 56 min.
Learning about the law or the form.	14 hrs., 31 min.	8 hrs., 2 min.
Preparing the form.	19 hrs., 18 min.	9 hrs., 6 min.
Copying, assembling, and sending the form to IRS.	48 min.	0

Frequency of Response: Annually.
Estimated Total Recordkeeping/
Reporting Burden: 45,956,094 hours.
OMB Number: 1545-0052.
Form Number: IRS Form 990-PF.

Type of Review: Resubmission.

Title: Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation; Return of Certain Excise Taxes on Charities and Other Persons Under chapters 41 and 42 of the Internal Revenue Code.

Description: Internal Revenue Code section 6033 requires all private foundations, including section 4947(a)(1) trusts treated as private foundations, to file an annual information return. Section 53.4940-1(a) of the Income Tax Regulations requires that the tax on net investment income be reported on the return filed under section 6033. Section 6011 requires a report of taxes under chapter 42 of the Code for prohibited acts by private foundations and certain related parties. Section 4947(a) trusts may file Form 990-PF in lieu of Form 1041 under the provisions of sections 6033 and 6012.

Respondents: Businesses or other for-profit, Non-profit institutions.

Estimated Number of Respondents/Recordkeepers: 43,067.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping 130 hours, 6 minutes.
Learning about the law or the form. 21 hours, 25 minutes.
Preparing the form 25 hours, 25 minutes.
Copying, assembling, and sending the form to IRS. 16 minutes.

Frequency of Response: Annually.

Estimated Total Recordkeeping/
Reporting Burden: 1,779,375 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-26515 Filed 11-9-89; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 89-95]

Revocation of Individual Customs Broker's License No. 6640 Issued to Steven T. Peterman

AGENCY: U.S. Customs Service, Treasury.

ACTION: General Notice.

SUMMARY: Notice is hereby given that the Secretary of the Treasury on March 21, 1989, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and 111.74 of the Customs

Regulations, as amended (19 CFR 111.74), revoked the individual Customs broker's license No. 6640 issued to Steven T. Peterman. The appeal of this action having been dismissed by order of the Court of International Trade (Court No. 89-05-00275) is effective as of September 21, 1989.

Dated: November 6, 1989.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 89-26559 Filed 11-9-89; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Bureau of Educational and Cultural Affairs University Affiliations Program: Application Notice for Fiscal Year 1990

Applications for grants from U.S. institutions of higher education are invited under the University Affiliations Program.

Authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256 (Fulbright-Hays Act). The purpose of the Fulbright program is "to enable the government of the United States to increase mutual understanding between the people of the United States and people of other countries."

Public reporting burden for this collection of information is estimated to average 15 hours per response, including the time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to USIA Clearance Officer, M/ASP, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

(Information collection involved in this program has been approved by OMB Action Number 3116-0179, expiration date 11/30/89.)

Summary

The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA or the Agency) invites applications from institutions of higher education under the University Affiliations Program. Through the University Affiliations Program, USIA provides grants for the development and strengthening of linkages between U.S. and foreign institutions of higher education for a

period of two to three years. The duration varies by geographic area.

The goal of the program is to facilitate bilateral institutional relations through faculty and staff exchanges.

Participating institutions exchange faculty and staff for teaching, lecturing, and research assignments of one month or longer (with exceptions as noted for North Africa, Middle East, South Asia, and the American Republics); maintain their faculty/staff on full salary and benefits; and use grant funds to defray economy-class costs for international travel, per diem expenses, planning trips, and purchase of educational materials (up to 5% of the total grant amount) to be used at and donated to the foreign institution in countries or regions indicated. Educational materials must be purchased in the U.S. Planning trips for Project Directors (one in each direction) are allowable to complete plans before exchanges between the partners begin. Feasibility studies needed for the preparation of the proposal will not be funded. Proposals for research only will not be considered unless combined with substantial participation in graduate-level seminars and with the substantial collaboration of foreign nationals. The 1990 competition is limited to specific countries and specific fields of study as indicated in each geographic area program description. The program design for each region describes variations in allowable activities (see below).

In the U.S., program participation is open to accredited U.S. institutions of higher education, including graduate schools, four-year colleges and universities; and consortia of universities (proposals may be submitted by a member institution or an organization with authority to represent the consortium). Community and two-year colleges are eligible only for the "Geographic Area Program Competition" in the American Republics. For consortia of institutions, specific responsibilities of each institution and aspects of proposed program participation should be defined.

Overseas participation is open to recognized degree-granting institutions of higher education and independent research institutes.

Eligible research institutes are defined as reputable, non-partisan, non-profit, private or public research institutions that have produced significant long-term scholarly research published in nationally recognized journals or other publications; and have national (and preferably international) professional recognition. Exchange projects including research institutes will be considered only if the institute works in a field of

high scholarly value to the U.S. university, if proposed exchanges cannot otherwise take place without USIA assistance, and if they include a group of highly trained specialists not otherwise reached.

Participants traveling under USIA grant support must be U.S. citizens, if representing the U.S. partner institution, and nationals of the country of the foreign partner.

Subject to the availability of funds in Fiscal Year 1990, approximately 20 grants will be available on a competitive basis for specific geographic locations and themes. Awards will reflect Agency priorities and academic considerations. Complete program criteria and application guidelines appear below.

All proposals recommended for funding will be subject to Agency review for conformity to relevant OMB and legal guidelines. Funding of any proposal is subject to the regular procedures, regulations and requirements for Bureau of Educational and Cultural Affairs grants, including review by USIA's Office of General Counsel and submission for approval to the Board of Foreign Scholarships.

U.S. institutions should collaborate with their foreign partners on planning and preparing proposals. U.S. institutions are also responsible for the submission of proposals which must reach USIA no later than 5:00 p.m. EST, Thursday, February 15, 1990.

Geographic Area Program Competition—Africa

Description of Program: Grants for the exchange of faculty and staff. Grant will cover international travel, per diem, educational materials, and two planning trips for Project Directors (one in each direction).

Eligible Countries: All sub-Saharan African countries are eligible for participation in the program. The Agency is especially interested in receiving proposals for South Africa, Nigeria, Uganda, and Congo.

Eligible Fields: Proposals will be considered for any discipline in the Humanities and Fine Arts, Social Sciences, Law, Library Science, American Studies, Education, and Communications. The Agency is especially interested in receiving proposals in the following fields for this year and the following year:

- Business Administration
- University Administration
- Student Counseling and Support Services
- Ecology and Environmental Studies

Duration of Projects: Three years.
Grant Amount: Grant requests of up to \$75,000 will be considered, although

universities are encouraged to ask for only as much money as they can effectively use within the constraints of their linkage plan and three-year time frame.

American Republics

Description of Program: Grants for the exchange of faculty and staff. Grant will cover international travel, per diem, and educational materials for faculty and staff exchanges of one month or more. Grants can also support one-week conferences, internships (structured, substantive professional affiliations related to the field of specialization), and up to two planning trips for Project Directors (one in each direction). See section on grant amounts for additional details. One or more universities in the U.S. to link up with a group of institutions in Central America and the Caribbean. Single country projects for South America.

*Eligible Countries and Fields: Central America—*Only regional proposals in Ecology and Environmental Studies will be considered and should include two or more of the following countries: Belize, Costa Rica, El Salvador, Honduras, Guatemala, Nicaragua, and Panama. The regional scope of the proposal will be an important selection factor.

*Caribbean—*only regional proposals in the field of Teacher Education will be considered and should include two or more of the following countries: Bahamas, Barbados, Guyana, Jamaica, and Trinidad and Tobago. The regional scope of the proposal will be an important selection factor.

South America (single-country projects): Argentina—Business Administration; Brazil—Ecology and Environmental Science; Chile—Humanities and the Social Sciences; and Ecuador—History, Economics, and other Social Sciences.

Duration of Projects: Three years.

Grant Amount: For Central America and the Caribbean the maximum grant for each regional project funded will be \$100,000. In addition to travel and per diem for faculty and staff exchanges of one month or more, the grant can cover a one-week conference, internships from one-three months, educational materials, and up to two planning trips of Project Directors. Single country grants for South America will be a maximum of \$75,000 and may include the same components as the regional grants.

Europe

Description of Program: Grants for the exchange of faculty and staff. Grant will cover international travel, per diem, educational materials, and two planning

trips for Project Directors (one in each direction).

Eligible Countries: Czechoslovakia (limited to universities outside Prague), German Democratic Republic, Hungary, USSR (limited to universities in the Baltic States, Byelorussia and the Ukraine), and Yugoslavia.

Eligible Fields: Proposals will be considered for any discipline(s) in the Social Sciences or Humanities. Preference, however, will be given to the following fields: American Studies, Business Administration, Industrial Relations, Sociology, Communications, Economics, Education, Environmental Issues, Fine Arts, Law, Political Science, and TEFL. For Yugoslavia, preference will be given to American Studies and Business Administration.

Duration of Projects: Two to three years.

Grant Amount: Two-year projects: \$60,000; Three-year projects: \$75,000.

East Asia and the Pacific

Description of Program: Grants for the exchange of faculty and staff. Grant will cover international travel, per diem, educational materials, and two planning trips for Project Directors (one in each direction).

Eligible Countries with Priority Fields: Australia—Projects focusing on Australian-American relations or that involve comparative studies in fields such as international trade, higher education policy, or urban studies;

New Zealand—Political Science with special emphasis on government policy studies;

Thailand—American and Thai Studies;

Malaysia—Islamic Studies;

Indonesia—American and Islamic Studies;

Hong Kong—Social Sciences; and Peoples Republic of China—American and Chinese Studies or Social Sciences.

Eligible Fields: See country priorities.

Duration of Projects: Three years.

Grant Amount: Maximum amount for each three-year project is \$75,000.

North Africa, Middle East and South Asia

Description of Program: Grants for the exchange of faculty and staff. Grant will cover international travel, per diem, educational materials, and two planning trips for Project Directors (one in each direction). Preference will be given to proposals which emphasize exchange periods of two months or longer.

Eligible countries: Algeria, Bahrain, Bangladesh, Bhutan, Egypt*, India, Israel, Iraq*, Jordan, Kuwait, Mauritania, Morocco, Nepal, Oman,

Pakistan*, Qatar, Saudi Arabia, Sri Lanka, Sudan, Syrian Arab Republic*, Tunisia, United Arab Emirates, and Yemen.

Provided they meet academic review criteria, special consideration will be given to proposals received for affiliations with institutions in the locations marked by an asterisk (*).

N.B.—All proposals for India must be accompanied by proof of approval of the proposed program by the Government of India in order to comply with USIA technical review requirements. U.S. institutions are advised to contact Indian partner institutions about this requirement as early as possible, since review processes of Indian government ministries do not coincide with USIA program deadline. Indian government approval must be sought through the Executive Director, U.S. Educational Foundation in India, 12 Hailey Road, New Delhi, India 110001. Tel. 388944 through 388948. Cable USEFI.

Eligible Fields: Social Sciences, Humanities, Education, Communications, Business Administration, Library Science, Fine Arts, American Studies.

Duration of Projects: Three years.

Grant Amount: Maximum amount for each three-year project is \$75,000.

Special Competition for Exchanges to Commemorate the Quincentennial of the Discovery of the Americas

USIA also invites applications for a special competition with any country for faculty teaching and/or research projects which commemorate the Quincentennial of the European discovery of the Americas. Proposals should conform to the general guidelines published in this announcement with the following qualifications:

1. Only graduate schools and four-year colleges and universities are eligible to apply.

2. Proposals may be offered in any eligible discipline (Social Sciences, Humanities, and Fine Arts).

3. The proposal must focus on the discovery of the Americas in 1492, the subsequent colonization of Hispano-America, Brazil, or the European voyages of exploration through 1521.

4. The proposed project must demonstrate a scholarly contribution to the generation of new knowledge and insights, and should begin no later than fall 1990 and extend through 1993.

5. Eligible foreign partners include appropriate institutions worldwide.

6. Proposals may be for an affiliation between a U.S. institution and one foreign institution as in the regular program. The maximum grant amount for two-way exchanges is \$75,000 for

three year-projects. Proposals from a U.S. institution may also be for an affiliation with two foreign institutions from different geographic areas. For three-way exchanges, a U.S. institution might choose a partner in Latin America or the Caribbean, and a partner in the Iberian Peninsula. In such cases, the maximum grant amount would be \$80,000.

Requirements for Application—University Affiliations Program:

I. Eligibility: Applications on behalf of the collaborating institutions must be submitted by the U.S. partner. Eligible partner institutions are:

1. U.S.—Accredited institutions of higher education, including graduate schools, four-year colleges and universities; and consortia of universities (proposals may be submitted by a member institution or an organization with authority to represent the consortium). Community and two-year colleges are eligible only for the "Geographic Area Program Competition" in the American Republics.

2. Overseas—Recognized degree-granting institutions of higher education and independent research institutes.

II. Review Process: Proposals will be reviewed for technical, academic, and Agency considerations (defined below). Proposals which are technically ineligible (eligibility criteria stated below) will not be forwarded for further review by the academic and Agency review committees, so for this reason it is imperative that proposals be complete, accompanied by all necessary documentation, and with budgetary and other information in the required form.

Upon completion of the technical review, applicants will be notified in writing of the status of their proposals. There will be a grace period to submit any missing documentation. Technically eligible proposals will be forwarded for academic review. Proposals recommended by independent academic review panels will be further considered by USIA grant review panels. Agency panels will evaluate proposals based on specific criteria addressing factors of institutional and personnel quality, quality of the program design, cost-effectiveness, and overall geographical and program balance.

Technical Review Criteria

To meet technical requirements, proposals must be submitted within deadline; the proposal package must consist of the original proposal and fifteen (15) complete copies, including:

(a) A cover sheet with names of both

institutions, name of foreign country, U.S. and foreign project directors and their deputies, addresses and telephone numbers of project directors, academic field(s) of proposed project; (b) proposal abstract (approximately two double-spaced pages); (c) a narrative (no more than twenty double-spaced pages); (d) three-column budget (covering international travel, maintenance, educational materials, and planning trips; see sample below); (e) academic resumes of program participants (no more than two double-spaced pages each); (f) required letters of agreement; (g) summary of international linkages (individual consortium members and research institutes must also meet this requirement); (h) for research institutes—publications issued in the past five years, resumes for personnel giving full academic qualifications of researchers, evidence of institutional standing, sources and amounts of funding, and uses of funds for most recent five years.

Proposed projects must be for a period of two to three years according to the program design for each geographic area, and be in eligible geographic and academic areas. See detailed requirements above.

N.B.: U.S. institutions are responsible for assuring complete understanding of and compliance with financial requirements by the foreign partner; and for obtaining the letter of commitment so stating in the specific format described below. No exceptions will be made.

Academic Review Criteria

Proposals are reviewed by independent academic panels (with geographic and discipline expertise) which make recommendations to the Agency based on the following criteria:

1. Soundness of proposal indicating academic quality, as reflected by focused goals and selection of relevant topics and activities, a clear statement of program goals and means to accomplish the goals, detailed description of project with statement of how the proposed project will be implemented and evaluated, a justification of the intellectual or institutional importance of the proposed program;

2. Evidence that theme(s) of proposed project fit priority field(s) stated in the announcement;

3. Evidence of strong mutual benefits to the institutions involved in the exchanges and a description of how each institution would benefit;

4. Feasibility of the program plan as it relates to the stated goals and selected topics and activities;

5. Academic quality of credentials and experience of participants in relation to the goals of the proposed exchange plan (including linguistic proficiency, where required);

6. Appropriateness of length of exchange visits given project goals.

7. Evidence of input from foreign institution;

8. Evidence that the proposed exchanges are likely to achieve the program's overall goal of mutual institutional development and production of new knowledge or skills;

9. Demonstration that the partnership is likely to continue after the expiration of the USIA grant; and

10. If the proposal requests support for an established, active linkage, evidence that the University Affiliations funding would allow for strengthening or innovation in the exchange relationship.

Note: Proposals for research only will not be considered unless the research involves collaboration among researchers from both institutions and is linked to graduate training in seminars.

Agency Review Criteria

USIA reviews only those proposals recommended for further consideration by academic review panels. Agency considerations are based on:

1. Academic quality, reflected in academic review panels' assessment of academic standing of participating institutions and individuals and the likely contributions to knowledge and education the project will make;

2. Advancement of mutual cultural and political understanding between the countries or geographic areas represented in the partnership;

3. Feasibility of program plan;

4. USIA overseas post assessments of feasibility and contribution to local academic development;

5. Evidence of strong institutional commitment by participating institutions;

6. Promise of long-term impact; and

7. Cost-effectiveness.

III. Application Procedures:

Applicants must submit one original and fifteen (15) complete copies of their proposals no later than 5:00 p.m. EST, Thursday, February 15, 1990, to: University Affiliations Program 1990, United States Information Agency, 301 4th Street, SW., Room 349, Washington, DC 20547.

In order to be eligible for review, the proposal (which constitutes the program application) must include:

1. Cover Sheet, described under Technical Review Criteria.

2. Summary document, a typed project abstract, approximately two double-spaced pages.

3. Narrative, total text not to exceed twenty typed, double-spaced pages, including:

- a. A brief (two-page) description of the participating institutions and participating departments;

- b. A detailed description of the proposed affiliation program including but not limited to: names and qualifications of designated Project Directors; roster of program participants for both institutions (for the duration of the proposed project), and their qualifications, including language skills; a statement of need for the proposed project (reflecting international, national and institutional considerations); a detailed, specific description of proposed activities, including when, where, and how they will occur, individuals who will carry out activities, departments involved; and the anticipated benefits of the program to participating institutions. A plan for institutional evaluation of the program must also be included.

4. A detailed, three-column budget (see sample below) outlining specific expenditures and source(s) from which funds are anticipated. The only budget items eligible for USIA grant funds are:

- a. International economy-class airfare travel costs for participants (travel must be on U.S. air carriers where available);

- b. Compensation (supplements to salary and/or benefits) or modest per diem may be requested for such specific items as housing, food and other maintenance items while in exchange status. Participating universities will be expected to continue full salary and benefits for their own faculty. The maximum amount that may be requested for compensation supplements/per diem may not exceed the rates authorized in the "Standard Government Travel Regulations" for travel in foreign countries and U.S. localities. The USIA officers listed in this announcement will supply these rates upon request.

The maximum rates described above are legal limitations only. Institutions are encouraged, in planning their budgets, to set temporary living allowances at a lower level which can be more easily maintained after the period of USIA funding. U.S. institutions are reminded that, in certain cases, restrictions may be placed on the export of salary in other currencies.

- c. Cost of educational materials (for overseas use), not to exceed up to 5% of grant amount.

- d. Cost of planning trips prior to project implementation. The program allows a maximum of two planning trips per grant for Project Directors.

Required format for budget:

All proposed expenditures should be individually listed (for the duration of the proposed project), using the format below. Each request for travel should specify round trip cost and destination for each participant per fiscal year. Each maintenance request should specify locality (city), daily rate, and duration of stay for each participant (not to exceed published Federal government rates). Costs for educational materials should not exceed the allowable amounts for the duration of the grant (up to 5% of grant). Direct and indirect costs, in-kind or cash contributions, absorbed by each institution should be included, along with regular salary and benefits, under the column of contributions for each partner:

	USIA	U.S. inst.	Foreign inst.
Year 1			
International travel.	X	X	X
Maintenance costs.	X	X	X
Salary & benefits.	n/a	X	X
Planning Trips (only 2).	X	X	X
Educational materials.	X	X	X
Other direct or indirect costs (waived).	n/a	X	X
Total.....	X	X	X
Year 2			
International travel.	X	X	X
Maintenance costs.	X	X	X
Salary & benefits.	n/a	X	X
Educational materials.	X	X	X
Other direct or indirect costs (waived).	n/a	X	X
Total.....	X	X	X
Year 3			
International travel.	X	X	X
Maintenance costs.	X	X	X
Salary & benefits.	n/a	X	X
Educational materials.	X	X	X
Other direct or indirect costs (waived).	n/a	X	X
Total.....	X	X	X

Ineligible Budget Items for University Affiliations Program Grant Support:

- Administrative expenses (both direct and indirect) incurred in connection with the affiliation;
- Expenses for student exchanges;
- Domestic travel, except for projects involving multi-campus universities and consortia of universities/colleges;
- Costs for dependents;
- Insurance coverage;
- Any costs for non-U.S. citizens or nationals from the U.S. institutions, or non-citizens or non-nationals representing the overseas universities.

5. *Appendices*, which should be kept to a minimum, must include:

a. *Academic résumés of professional accomplishments of potential U.S. and foreign participants, not to exceed two pages in length each*, clearly indicating relevant academic training, academic positions held, overseas seminars taught in the past four years, publications, and other professional accomplishments in the field of specialization, citizenship, the level of language skills, overseas experience, knowledge of the prospective partner country or area as demonstrated through courses taught, relevant scholarly travel. *Lengthy academic vitae should not be submitted.*

b. *Documentation of institutional support* for the proposed affiliation, including a signed letter of endorsement from the U.S. institution's (or consortium members') *president, vice-president, chancellor or provost, director* (for research institute), as well as a signed letter of endorsement from the *president (or equivalent)* of the non-U.S. institution. All participating institutions must provide the letter of support, which must specifically refer to the 1990 University Affiliations Program and commit participating institutions to maintaining their exchange participants on full salary and benefits during the exchange.

N.B: A general letter or agreement between participating U.S. and foreign institutions without reference to maintaining faculty and staff on salary and benefits will not be acceptable.

c. A brief summary of past and present linkages at both partner institutions.

(U.S. institutions are reminded that in certain areas, host government clearance/approval must be obtained before any exchange program of this type may be carried out. It is the responsibility of the foreign institution to seek such approval.)

6. *Deadline*: Complete proposal packages must be received by USIA no later than Thursday, February 15, 1990, 5:00 p.m. EST.

Applicants are responsible for the submission of complete applications. All required items should be received by the deadline.

7. *Notification*: Successful applicants will be notified on or about the end of June 1990. Funded proposals will be subject to periodic reporting and evaluation requirements.

Inquiries: For questions concerning programming and budget, please contact the following USIA officials:

Africa: Dr. Ellen Berelson (E/AEA), Academic Exchanges Division, Africa Branch, (202) 485-7355.

American Republics: Ms. Paula Durbin (E/AEL), Academic Exchanges Division, American Republics Branch, (202) 485-7365.

East Asia and the Pacific: Dr. Mikel Edwards (E/AEP), Academic Exchanges Division, East Asia/Pacific Branch, (202) 485-7402.

Europe: Dr. William James (E/AEE), Academic Exchanges Division, Europe Branch, (202) 485-7420.

Near East/South Asia: Mr. Michael Graham (E/AEN), Academic Exchanges Division, Near East/South Asia Branch, (202) 485-7368.

General Inquiries: Dr. Winnie D. Emoungu, Coordinator, University Affiliations Program, Office of Academic Programs, (202) 485-8489.

Dated: October 27, 1989.

William Glade,

Associate Director.

[FR Doc. 89-26526 Filed 11-9-89; 8:45 am]

BILLING CODE 5230-01-M

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held November 15, 1989 in Room 600, 301 4th Street, SW., Washington, DC from 11:00 a.m. to 12:00 p.m.

The Commission will meet with USIA's Director of Congressional Liaison. The Agency's Comptroller and Associate Director for Management also will brief the Commission on the Agency's budget.

Please call Gloria Kalamets, (202) 485-2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: November 6, 1989.

Ledra L. Dildy,

Management Analyst, Federal Register Liaison.

[FR Doc. 89-26527 Filed 11-9-89; 8:45 am]

BILLING CODE 5230-01-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 217

Monday, November 13, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

November 7, 1989.

DATE AND TIME: Friday, November 17, 1989, 9:00 a.m.—5:00 p.m.

PLACE: 1121 Vermont Avenue, N.W., Room 512, Washington, DC 20425.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

- I. Approval of Agenda
- II. Approval of Minutes of October Meeting
- III. Announcements
- IV. Briefing on the Effectiveness of Federal Civil Rights Statutes in Addressing Violence Motivated by Racial, Ethnic, or Religious Prejudice (Approximately 90 minutes)
- V. Draft Report on *Economic Status of Black Women: An Exploratory Investigation*
- VI. Draft Statement on *Intimidation and Violence, Racial and Religious Bigotry in America*
- VII. Proposal—Education and the Workplace
- VIII. Meeting Schedule, First Quarter, 1990
- IX. SAC Reports and Rechararters
 - The Employment of Minorities and Women by Kentucky State Government*
 - Voter Registration in Louisiana Parishes*
 - A Followup Forum on Census Undercounts and Preparations for the 1990 Census*
 - Civil Rights Laws and Legislative in West Virginia*
 - Discrimination Against Chippewa Indians in Northern Wisconsin*
 - Implementation in Utah of the Immigration Reform and Control Act: Phases One and Two*
- SAC Rechararters
- X. Commission Subcommittee Reports
- XI. Staff Director's Report
 - A. FOIA Regulations
 - B. 504 Regulations
 - C. FY 1990 Budget
- XII. Future Agenda Items

CONTACT PERSON FOR FURTHER

INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376-8312.

Jeffrey P. O'Connell,
Acting Solicitor.

[FR Doc. 89-26613 Filed 11-7-89; 4:47 pm]

BILLING CODE 6335-01-M

FEDERAL RESERVE SYSTEM COMMITTEE ON EMPLOYEE BENEFITS

TIME AND DATE: 7:30 a.m., Wednesday, November 15, 1989.

The business of the Committee requires that this meeting be held with

less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to: (a) The general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans. Specific items include: (1) Thrift Plan proposal; (2) Retirement Plan Social Security integration; and (3) pension supplement.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 8, 1989.

William W. Wiles,
Secretary of the Board.

[FR Doc. 89-26699 Filed 11-8-89; 1:44 pm]

BILLING CODE 6210-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE (NCLIS)

Cancellation of Meeting

This is to announce that the meeting of the U.S. National Commission on Libraries and Information Science (NCLIS), which was announced on page 46792 of the November 7 edition of the Federal Register has been cancelled.

FOR FURTHER INFORMATION CONTACT:

Susan K. Martin, NCLIS Executive Director, 1111 18th Street, NW, Suite 310, Washington, DC 20036, (202) 254-3100.

Dated: November 8, 1989.

Jane D. McDuffie,
Staff Assistant.

[FR Doc. 89-26836 Filed 11-8-89; 10:59 am]

BILLING CODE 7527-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Resolution Trust Corporation's Board of Directors will meet in open session at 3:00 p.m. on Tuesday, November 14, 1989, to consider the following matter:

Proposed regulation on principles of ethical conduct for RTC contractors.

The meeting will be held in the Amphitheater of the RTC Building located at 801 17th Street, N.W., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Corporation, at (202) 898-3604.

Dated: November 7, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,
Executive Secretary.

[FR Doc. 89-26612 Filed 11-7-89; 4:47 pm]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 13, 1989.

An open meeting will be held on Wednesday, November 15, 1989, at 10:00 a.m. A closed meeting will be held on Thursday, November 16, 1989, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Wednesday, November 15, 1989, at 10:00 a.m., will be:

Consideration of whether to issue a Policy Statement stating that the self-regulatory organizations should, on a voluntary basis, establish comprehensive planning and assessment programs to establish system capacity and vulnerability. For further information, please contact Tonya Noonan Herring at (202) 272-2415.

The subject matter of the closed meeting scheduled for Thursday, November 16, 1989, at 10:00 a.m., will be:

Institution of injunctive actions.
Formal order of investigation.
Settlement of administrative proceeding of an enforcement nature.
Opinion.

At times, changes in commission priorities require alterations in the

scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Robert Rosenblum at (202) 272-2200.

Dated: November 7, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-26729 Filed 11-8-89; 3:49 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register

Vol. 54, No. 217

Monday, November 13, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

34 CFR Part 208

RIN 1810-AA40

Mathematics-Science Education Program; State Grants

Correction

In rule document 89-18725 beginning on page 32936 in the issue of Thursday, August 10, 1989, make the following correction:

On page 32940, in the first column, in paragraph (d)(1), in the third line, "(1)(2) and (3)" should read "(a)(2) and (3)".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP89-98-007 and RP89-133-004]

Colorado Interstate Gas Co.; Compliance Filing

Correction

In notice document 89-25668 beginning on page 46111 in the issue of

Wednesday, November 1, 1989, make the following correction:

On page 46111, in the third column, in the heading, the docket numbers should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP90-102-000 et al.]

Trunkline Gas Company, et al.; Natural Gas Certificate Filings

Correction

In notice document 89-25772 beginning on page 46293 in the issue of Thursday, November 2, 1989, make the following correction:

On page 46294, in the first column, under 4. Trunkline Gas Company, the docket number should read "CP90-101-000".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87P-0207]

Canned Pacific Salmon Deviating From Identity Standard; Amendment of Temporary Marketing Permit; Bumble Bee Seafoods, Inc.

Correction

In notice document 89-24671 beginning on page 42993 in the issue of Thursday,

October 19, 1989, make the following corrections:

1. On page 42993, in the third column, under **SUMMARY**, in the 7th line, "inhabit" should read "inhibit".

2. On the same page, in the same column, under **SUMMARY**, in the 13th line, "produce" should read "product".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-89-41]

Petition for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

Correction

In notice document 89-25450 appearing on page 44003 in the issue of Monday, October 30, 1989, make the following correction:

On page 44003, in the first column, under **DATE**, in the fourth line, insert "November 20, 1989", following "before:".

BILLING CODE 1505-01-D

FAST TRACK FOOD

Monday
November 13, 1989

Part II

Department of Agriculture

Cooperative State Research Service

7 CFR Part 3402

Food and Agricultural Sciences, National
Needs Graduate Fellowships, Grants
Program; Administrative Provisions;
Proposed Rule

DEPARTMENT OF AGRICULTURE**Cooperative State Research Service****7 CFR Part 3402****Food and Agricultural Sciences, National Needs Graduate Fellowships, Grants Program; Administrative Provisions**

AGENCY: Cooperative State Research Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Cooperative State Research Service (CSRS) proposes to amend its regulations relating to the administration of the Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program conducted under the authority of section 1417(a)(3)(B) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(a)(3)(B)). This action is being taken to clarify certain rules and goals of the program, provide additional guidance to applicants so that the material submitted facilitates evaluation of proposals, modify the weight factors associated with two of the evaluation criteria, and add newly applicable Federal statutes and regulations.

DATE: Comments concerning this proposed amendment are invited from interested individuals and organizations. Comments must be received on or before December 13, 1989.

ADDRESS: Comments should be sent to Dr. K. Jane Coulter, Director, Higher Education Programs, Cooperative State Research Service, U.S. Department of Agriculture, Washington, DC 20250-2200.

FOR FURTHER INFORMATION CONTACT: Dr. K. Jane Coulter, 202-447-7654.

SUPPLEMENTARY INFORMATION: Paperwork Reduction.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the collection of information requirements contained in this proposed rule have been approved under OMB Document No. 0524-0024.

Classification

This proposed rule has been reviewed under Executive Order No. 12291 and it has been determined that it is not a major rule because it does not involve a substantial or major impact on the Nation's individual industries, Federal, State, or local governmental agencies, or on geographical regions. It will not have a significant economic impact on competitive employment, investment, productivity, innovation, or on the

ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, it will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law No. 96-534 (5 U.S.C. 601).

Regulatory Analysis

Not required for this proposed rulemaking.

Environmental Impact Statement

This proposed regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.210, Food and Agricultural Sciences National Needs Graduate Fellowships Grants. For the reasons set forth in the Final Rule-related Notice to 7 CFR part 3105, subpart V, 48 FR 29115, June 24, 1983, at which time the authority to administer this program resided in the Agricultural Research Service, this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

Under the authority of section 1417(a)(3)(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(a)(3)(B)), the Secretary of Agriculture is authorized to conduct a competitive graduate fellowships grants program. The administrative regulations governing the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program are proposed to be changed as follows:

Section 3402.6(a). Additional language is proposed for this section to specify the requirement that if a fellow completes the program of study early (less than 24 months for master's degree or 36 months for doctoral degree), remaining funds will revert to the granting agency.

Section 3402.6(b). Additional language is proposed for this section to urge grantee institutions to take maximum advantage of opportunities for awarding fellowships to population groups underrepresented in the food and agricultural sciences, particularly minorities and women.

Section 3402.12. Additional language is proposed throughout this section to guide applicants in the content and

format of the information they submit in order to facilitate the evaluation of proposals.

Section 3402.14. The use of a faculty summary vita form is proposed so that faculty credentials are presented in a concise and uniform format to facilitate the evaluation of proposals. Currently, the majority of proposals do not summarize this information as requested in the regulation and the peer review panel must use valuable time to sort through voluminous materials to obtain the relevant data.

Section 3402.15. It is proposed that any additional supporting information included in the Appendix of the proposal be referenced in the national need narrative so that peer reviewers can readily recognize the relevance of documents attached to the proposal.

Section 3402.19. Based on discussions with several peer panel members who have evaluated grant proposals under this program, it is proposed that the weight factors associated with evaluation criteria a. and b. be modified. We believe this modification will attach greater importance to an institution's basic program of graduate training, yet allow additional credit for the institution which incorporates special features in an effort to enhance the quality of its program. In addition, it is proposed that evaluation criteria b. and e. be revised to provide further guidance to applicants and to facilitate the peer review process.

Section 3402.22. It is proposed that this section be amended to add Federal regulations made applicable to this grant program subsequent to the issuance of 7 CFR part 3402.

Section 3401.25. It is proposed that this section be amended to require the grantee institution to submit a *Graduate Fellow Exit Report* form for each student supported by a grant as soon as the fellow is (a) graduated, or (b) officially terminated from the program. A compilation of the exit reports for the fellows supported by a grant shall constitute the final performance report for that grant.

List of Subjects in 7 CFR Part 3402

Grant programs—agriculture, Agriculture Higher Education Programs (HEP) Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program.

For the reasons set forth in the preamble, title 7, chapter XXXIV, part 3402 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3402—[AMENDED]

1. The authority citation for part 3402 continues to read as follows:

Authority: Section 1470, National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

2. Section 3402.6 is amended by:

- a. Adding a new last sentence in paragraph (a); and
- b. Adding a new second sentence in paragraph (b); as follows:

§ 3402.6 Fellowship appointments.

(a) * * * For fellows who complete the program of study early (less than 24 months for master's degree or 36 months for doctoral degree), the institution must refund any unexpended monies to the granting agency.

(b) * * * However, institutions are urged to take maximum advantage of opportunities for awarding fellowships to population groups underrepresented in the food and agricultural sciences, particularly minorities and women.

3. Section 3402.12 is amended by:

- a. Revising the introductory text;
- b. Revising Section 1;
- c. Revising the first sentence of Section 2; and
- d. Revising the last sentence of Section 4; as follows:

§ 3402.12 National need narrative.

A narrative for the national need area should be written in four sections. It should be typed, double-spaced, on one side of the page only, and limited to no more than 20 pages. The four sections to be included are as follows:

Sec. 1. This section must clearly establish that the proposed program of study and research will result in the development of outstanding expertise in the national need area for which funding is requested and will do so in a reasonable period of time. Present a detailed description of the proposed graduate program of study and research. If both master's and doctoral fellowships are requested, a separate plan of study should be included for each degree level. This section of the narrative should contain, but need not be limited to, the following components:

(a) The plan should specifically address the coursework which fellows will be required to take rather than the overall spectrum of departmental offerings. Identify courses, summarize content, and discuss sequencing. Explain how coursework will relate to fellows' research.

(b) Identify and describe areas of research that fellows will be encouraged to engage in via a thesis or dissertation.

(c) Discuss any special features of the graduate program such as the extent to which it will involve a combination-disciplinary approach (inter-disciplinary, multi-disciplinary, or cross-disciplinary) and thus result in development of expertise transcending a single discipline. Also discuss any other special features such as development of an unusual collateral specialization in a related discipline, experiential learning opportunities such as a practicum or internship, a unique mentoring program, seminars, or a multi-university collaborative approach.

(d) Discuss graduate program examination requirements, such as a proficiency or qualifying examination, a comprehensive examination, and an oral examination.

(e) Include a projected timetable for completing the proposed graduate program of study and research.

(f) If admission to the proposed doctoral program does not require a master's degree, discuss how institutional procedures allow for the bypass of a master's degree.

Sec. 2. Justify the institution's position that it presently provides a major, productive, recognized program of graduate study and research at the level(s) of study in the area of national need in which selected fellows would be engaged.

Sec. 4. * * * Examples of appropriate data are indices of student quality, enrollments and degrees awarded for recent years, placement of graduates, facilities, faculty research support, and publications of previous doctoral trainees.

4. Section 3402.14. The first sentence is revised as follows:

§ 3402.14 Faculty vitae.

This section should include a Summary Vita, Form CSRS-708, for each faculty member contributing significantly to institutional competence at the level(s) of graduate study in the national need area addressed in the proposal. * * *

5. Section 3402.15 is revised as follows:

§ 3402.15 Appendix.

Any additional supporting information deemed important for clarifying and/or strengthening the proposal should be included in an Appendix and referenced in the national need narrative.

6. Section 3402.19 is amended by:

- a. Revising the weight factor associated with evaluation criterion a.;
- b. Revising evaluation criterion b. and revising the weight factor associated with it; and
- c. Revising evaluation criterion e.; as follows:

§ 3402.19 Evaluation criteria.

Evaluation Criteria	Weight
a. * * *	30
b. The degree to which the proposed program of study reflects special features such as a combination-disciplinary approach (inter-disciplinary, multi-disciplinary, or cross-disciplinary), an unusual collateral specialization in a related discipline, experiential learning opportunities, a unique mentoring program, seminars, or a multi-university collaborative approach.	10
e. The degree to which supporting summary data substantiate program quality in the targeted national need area.	* * *

7. Section 3402.22 is amended by adding newly applicable Federal regulations in numerical order as follows:

§ 3402.22 Other Federal statutes and regulations that apply.

7 CFR part 3017—Governmentwide Debarment and Suspension (Nonprocurement); Governmentwide Requirements for Drug-Free Workplace (Grants), implementing Executive Order No. 12549 on debarment and suspension and the Drug-Free Workplace Act of 1988 (41 U.S.C. 701).

8. Section 302.25 is amended by redesignating the existing text as paragraph (a); and adding a paragraph (b); as follows:

§ 3402.25 Documentation of progress on funded projects.

(b) A Graduate Fellow Exit Report form is included in the program brochure. This form should be completed and submitted to CSRS-HEP by the project director for each fellow supported by a grant as soon as a fellow is (1) graduated, or (2) officially terminated from the program. When an exit report for each fellow supported by a grant has been accepted by USDA, the grantee institution will have satisfied the requirement of a final performance report for the grant.

Done at Washington, DC, this 6th day of November 1989.

John Patrick Jordan,
Administrator Cooperative State Research Service.

[FR Doc. 89-26483 Filed 11-9-89; 8:45 am]

BILLING CODE 3410-22-M

Test Report Federal Register

Monday
November 13, 1989

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29

Airworthiness Standards; Occupant
Restraint in Normal and Transport
Category Rotorcraft; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. 25287; Amdts. 27-25 and 29-29]

RIN 2120-AB35

Airworthiness Standards; Occupant Restraint in Normal and Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments to the airworthiness standards for normal and transport category rotorcraft add two dynamic crash impact design conditions for seat and occupant restraint systems and increase the static design load factors for seating devices and items of mass in the cabin or adjacent to the cabin as prescribed. These amendments also prescribe a shoulder harness for each occupant and adopt human impact injury criteria as a measure for occupant protection for dynamic crash impact conditions. These amendments, consistent with the present state of the art, significantly improve occupant protection for normal and transport category rotorcraft in a survivable emergency landing impact mode.

EFFECTIVE DATE: December 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. J. H. Major, FAA, Regulations Group, ASW-111, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193-0111, telephone (817) 624-5117 or FTS 734-5117.

SUPPLEMENTARY INFORMATION:

Background

These amendments are based on Notice of Proposed Rulemaking (NPRM) No. 87-4 (52 FR 20938; June 3, 1987) which proposed to amend the rotorcraft airworthiness standards to improve occupant protection in normal and transport category rotorcraft for a survivable emergency landing impact. Notice No. 87-4 proposed to increase occupant protection and to assess the capability of the occupant restraint system and rotorcraft seats for a combined vertical and longitudinal dynamic test and for a primarily longitudinal dynamic test which are representative of emergency landing impact scenarios and to improve occupant protection from certain items of mass in an emergency landing impact. Occupant injury criteria were also proposed as unique pass/fail criteria for

the seat and restraint system dynamic test conditions. The restraint system encompasses the seating device, cushions, and torso restraint system, also known as a safety belt and a shoulder harness. This rulemaking activity is one part of the FAA Aircraft Crash Dynamics program outlined in the Federal Register on September 21, 1984 (49 FR 37111).

In light of comments, the FAA reopened the comment period until May 6, 1988, and also announced in the Federal Register (53 FR 7579; March 8, 1988) that a public meeting would be held in Fort Worth, Texas, on April 20, 1988. The viewpoints presented by participants at the public meeting helped the FAA clarify the issues and counterproposals presented in response to the notice. A copy of the meeting transcript is contained in the docket for this rulemaking. All interested persons have been given an opportunity to participate in the making of these amendments and due consideration has been given to all matters presented. A number of nonsubstantive changes and minor changes of an editorial and clarifying nature have been made to the proposals based upon comments received and upon further FAA review. No comments were received relating to the preliminary regulatory evaluation economic impact summary contained in the notice or to the associated economic evaluation report filed in the docket. Except as indicated herein, the proposals contained in the notice have been adopted without change.

The proposals were based on the data, references, and conclusions contained in Report No. DOT/FAA/CT-85/11, "Analysis of Rotorcraft Crash Dynamics for Development of Improved Crashworthiness Design Criteria," June 1985, and other data sources such as full-scale rotorcraft and small aircraft impact test reports some of which were contained in SP622, "Crash Dynamics of General Aviation Aircraft," April 1985, published by the Society of Automotive Engineers (SAE). A copy of each report is contained in the regulatory docket.

Since these two reports were published in 1985, additional reports and information have been published about dynamic tests of aircraft seats. Much of the information, data, and conclusions from these tests provides: (1) Basic aircraft impact response data; (2) seat and anthropomorphic test dummy (ATD) interface loads and motion; (3) human injury assessments and the relationships associated with the proposed impact conditions; and (4) assessments of aircraft seat design technology required to comply with the proposed criteria. This body of aircraft information, data,

and test results is also applicable, in part, to rotorcraft designs and supports this rulemaking activity.

Two dynamic test conditions were proposed in Notice No. 87-4. One test is primarily a vertical impact condition with vertical and longitudinal loads to simulate ground impact following a high rate of vertical descent with the Rotorcraft level. This condition emphasizes occupant vertical loading and determines the effectiveness of design features provided to restrain and support the occupant and to attenuate or control the loads imposed on the occupant. This reduces the potential for spinal compressive injury in an impact of this type.

The second test, a longitudinal impact with yaw angle, simulates a horizontal impact with a ground level obstruction such as a sloped ground surface or rise. This test condition provides an assessment of the occupant restraint system, potential secondary head impact with structure, etc., and seat structural performance in this mode.

Any direct correlation or relationship between the two dynamic test conditions was not envisioned or intended. These two dynamic test conditions were derived from the civil rotorcraft accident study of Report No. DOT/FAA/CT-85/11 and other aforementioned data. These two test conditions represent the expected aircraft response to an emergency landing impact, measured at the cabin floor/seat attachment, which is transmitted to the occupant through the seat and torso restraint system. Accordingly, it was not intended to include a fuselage, landing gear, or a major part of the fuselage to demonstrate compliance with the proposed seat test standards.

Of course, for a seat that is an integral part of the rotorcraft structure, the test setup must include a sufficient part of the fuselage to duplicate the seat and the occupant restraint system for a proper test. These seat dynamic test conditions are consistent with the structural characteristics of present rotorcraft designs and with the general or typical operational emergency landing impact found. The tests also provide for measured and meaningful protection of occupants in normal and transport category rotorcraft. The occupant injury pass/fail criteria adopted in these amendments are the same as those proposed for small airplanes in Notice No. 86-19 (51 FR 44878; December 12, 1986) and adopted in Amendment 23-36 (53 FR 30802; August 15, 1988) and are compatible with those proposed in Notice No. 86-11

(51 FR 25982; July 17, 1986) and adopted in Amendment 25-64 (53 FR 17640; May 17, 1988) for transport airplanes. The injury criteria are also found in Advisory Circular AC 21-22, "Injury Criteria for Human Exposure to Impact," June 20, 1985.

A major concern addressed by the proposal for occupant injury and seat and torso restraint system pass/fail criteria is the secondary head impact which may inflict a debilitating injury and result in concussion and possible unconsciousness. The measurement proposed in Notice No. 87-4 is the head injury criteria (HIC) used in Federal Motor Vehicle Safety Standard No. 208 (49 CFR 571.208). The HIC must be applied when the results of the seat dynamic tests show that structure or other hard objects are within the anthropomorphic test dummy's (ATD) head strike envelope. This proposal uses a practical alternative dynamic seat test procedure rather than requiring tests with seats installed in the particular aircraft fuselage design. The head acceleration time history must be measured and recorded during the seat dynamic tests and then evaluated according to the HIC criteria whenever secondary head impact may occur. This allows testing of a seat and approval whenever installed for unique interior and cockpit arrangements.

Spinal injuries occurring during rotorcraft accidents are another concern. The frequency of serious spinal injuries versus the total frequency of serious injuries in survivable helicopter accidents is approximately 30 percent as shown in Figure 30 of Report No. DOT/FAA/CT-85/11.

The Dynamic Response Index (DRI) which is based on a single lumped-mass, damped-spring model of the spine and respective support mass has traditionally been used to predict probability of spinal injury in the performance evaluation of military airplane ejection seats. The DRI has been correlated with ejection seat testing and service experience to provide a level of confidence for this ejection seat application. However, there are inherent differences in function, geometry, dynamic pulse exposure, and occupant restraint between civil aircraft seats and military ejection seats. The difficulty of selecting the most representative acceleration measurement point in the occupant/seat systems makes direct application of the DRI questionable and difficult as a performance criterion for civil aircraft seats.

As reported in SAE Paper No. 850851, "Data for the Development of Criteria for General Aviation Seat and Restraint

System Performance," April 1985, and as discussed in paragraph 6(c)(5) of AC 21-22, the pelvic and spinal lumbar compression load limitation of 1,500 pounds (6.7 kilo newtons) proposed in the notice is an appropriate limit to assure a low probability of spinal injury for rotorcraft as well as airplane occupants. The pelvic compressive load measured in the ATD is direct, easily measured, and requires no additional analysis or interpretation to determine compliance with the proposed standard. In addition, seat pan acceleration and an ATD spinal compression load measured in a test of military helicopter seats indicate an inordinate variation between the spinal load and seat pan acceleration. Therefore, seat pan accelerations are not a reliable prediction of spinal compression loads.

Localized cabin floor deformation can occur as a result of fuselage deformation in a survivable emergency landing impact. The simulated floor or seat rail displacement of 10° pitch and 10° roll will prove the ability of the seat and its floor or sidewall attachments to tolerate such structural deformation or displacement resulting from an impact. Seats integral with the fuselage or bulkhead-mounted (without tracks) rather than floor-mounted need not be deformed prior to conducting the dynamic tests. The simulated floor deformation specified for the dynamic tests is not intended to be a measure of the floor strength or deformation capability but is intended to demonstrate the tolerance of the seat and its attachments to accept floor deformation common to actual crashes.

The new static strength requirements of §§ 27.561 (b)(3) and (c) and 29.561 (b)(3) and (c) contain increased static design inertial load factors to provide an improved level of safety for seats and occupant restraint systems and for items of mass installed both inside the cabin and adjacent to the cabin, as prescribed. These new seat static design inertial load factors will supplement the seat and restraint system dynamic test standards in new §§ 27.562 and 29.562. Those items of mass outside of and adjacent to the cabin must be designed to an increased forward inertial load factor. This increased factor reduces the likelihood of attachment failure and subsequent penetration of the item of mass into the cabin.

The current static design inertial load factors for transport rotorcraft underfloor fuel tanks are retained in revised § 29.561(d). Revised fuel tank standards are deferred for further study and development of possible alternate means of rotorcraft fuel tank protection.

Discussion of Comments

General

Sixteen commenters from small and large U.S. helicopter manufacturers, foreign airworthiness authorities, foreign helicopter manufacturers, and other groups and individuals responded to the notice. All commenters agree with the FAA objective to improve occupant safety in an emergency landing impact, one recommends adoption of standards without lengthy delay, and several offer counterproposals and recommendations.

A commenter emphasizes that the proposal should not apply to rotorcraft designs presently in production or undergoing type certification. The new standards do not apply to rotorcraft for which application for type certification is made prior to the effective date or to derivatives of such rotorcraft for which an application for an amended type certificate is made after the effective date of these amendments.

Several commenters support the proposal for installation and mandatory use of a shoulder harness, also called an upper torso restraint. Three commenters also recommend installation and mandatory use of an upper torso restraint for all newly manufactured rotorcraft after a certain date. National Transportation Safety Board (NTSB) Recommendation No. A-85-70 recommends installation of a shoulder harness for each seat in rotorcraft manufactured after December 31, 1987. The FAA has initiated a separate rulemaking project which will respond to recommendations of the NTSB as well as the commenters relative to mandating shoulder harnesses in production rotorcraft. Therefore, no change is necessary for this amendment which applies only to wholly new rotorcraft designs for which a type certificate application is received after the effective date of this amendment. A commenter also recommends installation of new design seats with harnesses that meet the dynamic test standards, whenever the rotorcraft interior is refurbished for older rotorcraft. This recommendation is beyond the scope of this rulemaking activity.

A commenter objects to equal dynamic test standards for normal and transport category rotorcraft and refers to a public policy of higher or more stringent standards for transport category rotorcraft than those of normal category rotorcraft. The standards, which are equivalent for both categories, have been derived from the rotorcraft emergency landing impact and fuselage deformation characteristics of

small and large rotorcraft which are based on accident and incident information of both categories.

The standards do, therefore, consider both categories in relation to size, weight, and other factors and rightfully afford the necessary protection for passengers in both cases.

The seat design standards reflect the crash impact pulse derived from the accident information and fuselage impact deformation data. These values do not differ markedly between small and large helicopters. The objective, to significantly improve occupant protection for small and large helicopters, is achieved by adoption of the proposed standards to simulate known impact conditions and to avoid exceeding human injury criteria.

It should be noted that the human impact injury criteria set out in AC 21-22 does not vary with respect to the category of aircraft.

Several commenters contend that the dynamic test standards are too severe and they object to the use of an ATD. They suggest the use of a simplified dynamic vertical drop test using a mass to simulate the occupant. In addition, they consider static strength substantiation for the longitudinal impact condition to be sufficient. Other commenters also object to the dynamic test standards because they believe that proving compliance is beyond the technical and financial capability of small companies. These and other commenters object to the proposed static design inertial factors for occupants and items of mass in the cabin, as well as those items external to the cabin, and recommend alternate factors. These concerns are addressed in the specific comments.

Specific Comments on the Proposals

The following comments are keyed to like-numbered proposals in Notice No. 87-4 and are presented in the same order as the corresponding amendments found in the rules portion of this document.

Proposal 2. Notice No. 87-4 proposed a revision to the introductory text of paragraph (b) of § 27.561 to remove the word "minor" before the words "crash landing." No comments were received on the introductory text, and it is adopted as proposed.

After further FAA review of proposed paragraph (b)(3), the subjects were reordered for emphasis and clarity. This editorial change places "each occupant" as the first subject and "each item of mass" as the second subject in this standard. As proposed, paragraph (b)(3) is also changed for clarity to refer to

static load "factors" rather than "forces."

A commenter requests that the phrase "inside the cabin" be added after the phrase "items of mass" in proposed paragraph (b)(3) to define the scope of the standard for these items of mass. The FAA agrees, and the change has been incorporated to prevent confusion between the scope of paragraphs (b)(3) and (c). The FAA notes paragraph (c) refers to external items of mass or items outside of the crew and passenger compartments.

Comments on Static Load Factors of Proposal No. 2, Paragraph (b). Comments were received concerning the magnitude of the proposed increased static load factors, and a discussion of the comments follows.

A commenter recommends, in conjunction with an alternate guideline to the proposed seat dynamic tests, a static design guideline and an objective standard that contain lower inertial load factors than those proposed in Notice No. 87-4. The commenter acknowledges that this static design guideline is without supporting data but is based on his knowledge and intuitive conclusions. The same commenter also suggests more appropriate inertial load factors could be derived from a study of comparative static and dynamic tests of several seat designs.

Two other comments recommend adoption of lower inertial load factors. One referred to those proposed during the Rotorcraft Regulatory Review Program public meeting in December 1979. Another commenter forwarded a matrix or table of the inertia factors proposed in the recent rulemaking activity for rotorcraft and small and transport airplane seats, and states that the variation found in the factors for the different aircraft is not justified. The commenter suggests that the rotorcraft inertial factors are too high and should be lower.

One commenter proposes requiring structural capability to support and restrain a 170-pound pilot (or passenger) with a shoulder harness and safety belt for an 8g forward inertial load factor, combined with a 4g sideward inertial load factor, to approximate a 9g (combined) factor. The commenter proposes to omit the longitudinal/horizontal deceleration dynamic test proposed in the notice and rely on the noted static test or structural analysis results. The commenter, however, proposes a simplified dynamic vertical drop test and the longitudinal static load condition to dramatically improve crash survivability but permit small manufacturers to conduct meaningful tests and develop new model normal

category helicopters. Three other commenters did not comment on the proposed static inertial load factors (or static strength factors), but they did propose an identical, simplified dynamic test for the vertical and longitudinal velocity change or impact condition and only static strength substantiation for the longitudinal impact condition. See Proposal 3 for further discussion.

Two commenters propose no reduction in the load factors proposed in the notice. One commenter agrees with the inertial factors proposed but suggests an 18g downward factor when compared to a 12g limit contained in Table 39 of Report No. DOT/FAA/CT-85/11. The FAA notes the 12g±1g limit is recommended in the report for the design "stroking factor" on new design rotorcraft seats to limit the occupant spinal loads. However, a 25g downward inertia factor is recommended in the report as a design load factor after the seat "strokes." One commenter specifically recommends no reduction in the proposed static and dynamic standards in the notice, contrary to the recommendations from other commenters.

FAA Response to Comments of Static Load Factors of Paragraph (b)

Many commenters note the expense of compliance but do not propose alternative standards. The FAA is also concerned about the cost of compliance with the new standards. A preliminary cost benefit analysis was prepared for the notice, and a final cost benefit analysis has been prepared for these amendments. A copy is filed in the docket. See the economic summary in this preamble for further information.

These comments were reviewed in conjunction with available data such as that contained in Report No. DOT/FAA/CT-85/11. The static inertial factors are needed to supplement the two seat and occupant ATD dynamic test conditions in §§ 27.562(b) and 29.562(b). The inertial factors in § 27.562(b)(3) are compatible with the dynamic load factors of §§ 27.562(b) and 29.562(b) and are supported by a review of rotorcraft accidents reported in Report No. DOT/FAA/CT-85/11.

Although the static load factors proposed in Notice 87-4 are greater than those recently adopted for transport airplanes, the rotorcraft factors should be greater because of the differences in size, configuration, and typical impact attitudes and conditions between these types of aircraft. These differences result in rotorcraft experiencing greater load factors during impact than typical transport airplanes. A recent study

reported by Mr. G. Wittlin highlights the differences as discussed later.

Accordingly, higher load factors were proposed in Notice 87-4 for rotorcraft for both dynamic tests and static tests. Static loading substantiation, by test or analysis, assures that necessary static structural strength of the seat and its attachments to the rotorcraft are provided to support dynamic testing of the occupant restraint system. The static substantiation is a necessary supplement to dynamic testing which proves the performance of the seat and occupant restraint system, including secondary impact of the occupant's head, under rapid loading and load magnification due to dynamics of the system during the test. The static factors (i.e., structural strength requirements) are intended to provide sufficient strength for the seat and its attachments during dynamic testing and provide sufficient strength for the fuselage structure without dynamic testing. The FAA determined it is proper to not only impose the dynamic test standards but to impose static design standards to supplement the dynamic standards.

A technical paper entitled, "The Influence of Airplane Size and Crash Data Criteria," by Mr. G. Wittlin, was presented at the Flight Safety Foundation, Inc., Conference and Workshop on Occupant Safety, October 31 to November 3, 1988, at Arlington, Virginia. A copy of this paper is included in the docket. Table 8 in that paper contains a range of floor dynamic pulses as a function of four groups of airplane sizes ranging from general aviation to wide-body airplanes for both the vertical and longitudinal direction pulse determined from tests or parametric studies. Most present rotorcraft designs are comparable in size to the general aviation and commuter size airplanes for fuselage design and structural deformation characteristics and are further related to typical rotorcraft impacts that were included in Report No. DOT/FAA/CT-85/11. The pertinent information from the technical paper is summarized in Table 1.

TABLE 1.—PEAK LOAD FACTORS FOR FLOOR DYNAMIC PULSES FOR SMALL AIRPLANES

	Vertical direction	Longitudinal direction
General Aviation.....	33g peak	33g peak
Commuter.....	23g peak	17g peak

Narrow and wide body transport airplanes have significantly less

deceleration forces in the vertical and horizontal direction and are not comparable to rotorcraft designs. For comparison, the rotorcraft standards in the amendments to §§ 27.562 and 29.562 require a peak of 30g for the downward case (vertical with horizontal component) and 18.4g for the horizontal case (longitudinal with yaw component). These dynamic condition values for rotorcraft standards compare favorably to the floor pulses in the table above for comparable-sized airplanes.

In summary, the static inertial design factors supplement the two dynamic test conditions. The 16g forward static design factor is needed to supplement the 18.4g dynamic standard and the 20g downward (vertical) static design factor relates to the 26g vertical component of the dynamic standard for seat strength and for backup or fuselage structural strength. Therefore, the static inertia factors of paragraph (b) are adopted as proposed.

Comments on Proposal 2, Paragraph (c). Three commenters recommend increasing the inertial load factors proposed in § 29.561(c) for items of mass outside the cabin as follows. One commenter states the inertial load factors proposed in paragraph (c) are too low and not consistent with those higher factors in paragraph (b) for interior items. Another commenter recommends an inertial load factor of 10g for both forward and downward directions as a proper design condition, while yet another commenter recommends 12g forward, 6 sideward, 12g downward, and retaining 1.5g upward.

The FAA agrees that higher factors will increase safety over those proposed by Notice No. 87-4 and are more compatible with the factors of amended § 27.561(b). Nevertheless, additional public notice and comment would be appropriate and necessary for the significant increase in the inertial factors recommended for attachment of external items of mass. Adopting higher inertial factor is beyond the scope of the notice; therefore, the inertial factors are adopted as proposed. However, the FAA will consider incorporating this suggestion into a future rule.

Proposal 3. New §§ 27.562 and 29.562 were proposed to add two dynamic test conditions and pass/fail criteria and to provide for acceptance of an alternate approach in place of the two physical tests. In Notice 87-4 the explanation for Proposal 3 contained justification for new §§ 27.562 and 29.562 being identical.

One commenter states public policy dictates a higher standard for transport

category rotorcraft when compared to the normal category standards and proposes simplified tests for normal category rotorcraft. The FAA notes transport rotorcraft in certain cases comply with higher standards than normal category rotorcraft, yet many of the standards are identical and applied in the same manner, such as the current seat structural strength and design standards in §§ 27.561 and 29.561 and §§ 27.785 and 29.785. The impact conditions for normal and transport rotorcraft are also considered the same. Since §§ 27.562 and 29.562 concern strength or performance of the seats and occupant restraint systems during an emergency landing impact derived from rotorcraft characteristics and accident information, these objective performance standards recognize and consider implicitly practical differences in the types of rotorcraft and seats. Additionally, the size, construction, use, and performance of many normal and transport category rotorcraft are very similar since the division between the two categories is 6,000 pounds gross weight. The information from the technical paper, "The Influence of Airplane Size on Crash Data Criteria," by G. Wittlin, presented in Table 1 earlier, also supports the dynamic impact conditions. Since the human impact injury criteria are not dependent on the type of rotorcraft, the injury criteria of §§ 27.562 and 29.562 are identical. Further, the rotorcraft accident study contained in Report No. DOT/FAA/CT-85/11, Table 8, reveals that occupants in accidents involving small-size helicopters could benefit more than occupants of larger helicopters from improved occupant standards. Normal category rotorcraft also constituted about 86 percent of the total U.S. rotorcraft fleet in 1984 according to the Helicopter Association International. This percentage has not changed appreciably.

One commenter states that the dynamic tests are impractical and too costly, and several others contend the increase in certification expense and the technical expertise required to meet the proposed standards, if adopted, would be an insurmountable obstacle. However, no quantitative economic data or information was submitted to the docket to support these arguments. The final economic evaluation shows benefits exceed the costs of compliance and also in-service operation for normal category rotorcraft designs. The FAA notes that technical expertise is available, and seats with stroking capability are in service in civil rotorcraft.

Several other commenters state the added expense will curtail certification of new part 27 rotorcraft designs. Since estimated benefits exceed the costs, new designs should not be deterred. One commenter agrees with the proposed standard for transport rotorcraft but not for normal category rotorcraft. The benefits expected from the part 27 standards are more significant than those of the part 29 standards according to the economic evaluation.

Editorial changes have been made to paragraphs (a)(1) and (a)(2) for clarity and also to agree with Amendment 25-64 for transport airplanes. The amendment, as adopted, states the occupant "is exposed to the loads" rather than "experience ultimate dynamic loads."

A commenter states that only seats occupied for takeoff and landing should be subject to the dynamic tests. The FAA agrees, and paragraph (b) is revised to apply to "each seat type design or other seating device approved for occupancy during takeoff and landing." This is similar to recently adopted § 25.562(b) in Amdt. 25-64 and includes an editorial change to add "type design" to seats. Those seats not complying with these standards or the standards in §§ 27.561, 27.785, 29.561 and 29.785 must nevertheless comply with the flight load factors of the aircraft and must be placarded to prevent use of the seat during takeoff and landing. It is anticipated such "unique" seats will seldom be installed in rotorcraft.

Two commenters recommend the ATD should represent a nominal rather than a minimum weight of 170 pounds. The FAA agrees since the specification cited currently specifies the correct weight; therefore, the words "total minimum" to describe weight are removed from paragraph (b). In addition, the standard has been divided into two sentences to be parallel with § 25.562(b). The first sentence addresses the seats and an acceptable analysis rather than test alone. The second sentence addresses the previous comments on the ATD and includes the phrase "sitting in the normal upright position" to properly describe the ATD test position.

A commenter agrees with two dynamic seat tests but recommends adopting the two test conditions for transport airplanes contained in Notice 86-11 and adopted by Amdt. 25-64. These tests for airplanes have increased energy (higher velocity) but significantly decreased deceleration factors. The transport airplane standards represent a larger airplane fuselage having about 30 inches of structure that could crush and absorb the energy on impact. The two

dynamic tests proposed in paragraph (b) are proper for rotorcraft fuselage characteristics and for the impact attitudes and speeds for a significant percentage of the accidents. According to the information in Report No. DOT/FAA/CT-85/11, the proposed velocities represent about 92 to 95 percent of the survivable accidents, the range of attitude encompassed in the proposal represents about 77 percent, and the pulse duration represents a fuselage crushing or deformation capability of approximately 9.7 inches. For smaller rotorcraft which do not have 9.7 inches of available fuselage structure to absorb the impact energy, energy absorption by any fixed landing gear failure is tacitly included in the standard. Therefore, the dynamic tests in paragraphs (b) (1) and (2) are adopted with the changes discussed. "Downward" velocity has been added to paragraph (b)(1) and "forward" velocity to paragraph (b)(2). The last sentence in each includes the word "floor" as the correct description for measuring deceleration.

Two commenters request a change to paragraph (b) to explicitly provide for the use of analysis supported by test. The FAA agrees since paragraph (d) was intended to allow use of a rational analysis supported by test as an option to the use of test alone. Paragraph (b), as adopted, includes a clause identical to that contained in § 25.562(b) stating dynamic tests or rational analysis based on dynamic tests of a similar type seat may be used. As a result of two comments, paragraph (d) is revised to apply to the entire section rather than to only paragraph (c).

A commenter suggests in place of proposed paragraph (b) for dynamic tests to require either: (1) A static design standard which would include mandatory upper torso restraint, consideration of floor flexibility or distortion, and energy absorbing features as equal to dynamic tests; or (2) simplified dynamic tests without an ATD. The test would call for measuring the acceleration factors on the seat pan using a mass simulating a 170-pound occupant for the test conditions contained in the notice. Specific proposed standards to accomplish the objectives cited by the commenter were not included. The FAA does not agree that a static test is sufficient to duplicate the occupant loads and motion occurring during a dynamic impact condition; therefore, the dynamic test standard is retained.

Three commenters offer a counterproposal to paragraphs (b) (1) and (2) for normal category rotorcraft. These commenters are concerned with small rotorcraft equipped with seats

integral with the basic structure of the fuselage. Two of the small rotorcraft designs in use today have features on the flightcrew seats which allow stroking or seat displacement to limit the vertical loads during an impact. The effectiveness of these features for a specific impact condition is not known. The commenters propose static strength substantiation for the longitudinal impact case rather than dynamic test since static strength substantiation is considered sufficient. They propose one dynamic test—vertical with horizontal impact velocity for a resultant of 30 fps. An ATD would be replaced with a mass to simulate the occupant. The deceleration forces or inertial load factor measured on the mass would not be allowed to exceed 23g for more than 0.025 seconds total. In addition, their proposal would allow use of the landing gear and fuselage support structure and/or seat to absorb the energy and reduce the impact forces to 23g or less on the mass. A commenter states this dynamic test concentrates on spinal compression loads and further contends the error likely to occur in their counterproposal is less than the error from the tests contained in Notice 87-4 when using the ATD because in reality, rotorcraft occupant weight and size vary significantly from that of the ATD.

The FAA notes that the ATD represents a 50-percentile male. One of the three commenters refers to Report AD-A093784, December 1980, and AMCP 706-210 as the basis for the counterproposal. These commenters advocate the counterproposal as a practical means for small manufacturers to develop (and certify) new part 27 designs while improving occupant protection. One commenter also advocates static test alone rather than a dynamic test for the longitudinal impact case. Reduced static design inertial load factors are recommended rather than those contained in Notice 87-4. However, the commenter agrees with an increase from 9g to 16g forward factor for static strength substantiation if the proposed longitudinal dynamic test is not adopted. This commenter proposes a vertical impact test using an ATD and, in addition, a reduced severity test which equals that proposed for transport airplanes in Notice 86-11 and later adopted. One commenter states adopting dynamic tests and using an ATD, as proposed, would cause a total redesign and may result in abandoning current certification activity on a small, four-place helicopter.

The FAA notes that the cost benefit analysis shows the benefits derived, especially for smaller rotorcraft, exceed

the costs as noted in the economic summary of this preamble. Two dynamic impact test conditions are necessary to properly assess the restraint and support of occupants so that the human injury impact criteria will not be exceeded. The criteria include the assessment of any secondary head impact with structure. The first part of this preamble contains a further description of the objectives and reasons for adopting the two dynamic impact test conditions.

One commenter supports the FAA analysis and agrees that the study in Report No. DOT/FAA/CT-85/11 indicates a need for vertical energy absorption to limit occupant spinal compression injuries. The third highest hazard reported was related to "vertebral" compression injuries resulting from high vertical forces commonly found in rotorcraft accidents. Tolerance to compressive injuries of the spine decreases as age increases, and civil aircraft occupants are typically (15 to 20 years) older than military aircraft occupants. The commenter further states most of the present energy absorbing seat and restraint system technology is based on military personnel and military aircraft designs or applications. The FAA notes the military rotorcraft criteria are too stringent for civil rotorcraft, and the FAA has previously published civil aircraft human impact injury criteria in AC 21-22. The commenter states that the dynamic tests proposed in Notice No. 87-4 should help in assuring the seat and occupant restraint system will function properly under dynamic (impact) conditions. The commenter further states the two dynamic test conditions proposed are similar to those recommended in Report No. DOT/FAA/CT-85/11, Table 39 and Figure 37, except less severe. The commenter recommends no further reduction from the proposals in Notice No. 87-4 and disagrees with other commenters who recommend that the FAA reduce the severity of the tests or delete the dynamic tests. The commenter further states that the FAA proposals address many of the major hazards that cause serious and fatal injuries in survivable accidents. The commenter supports the two proposed dynamic seat and occupant test standards as proper, well defined, and cost effective, while acknowledging that rotorcraft with integral seats may require expanded advisory material. The discussion for paragraph (b)(3) addresses "integral seat designs."

In summary, the two conditions in paragraphs (b) (1) and (2) are justified for normal and transport category

rotorcraft and are based on a review of rotorcraft accident data as stated before. The standards in paragraphs (b) (1) and (2) are adopted with the additional description of velocity and floor deceleration noted previously.

Some commenters state the proposed standard does not recognize or allow the use of seats integral with the fuselage structure, which is typical of many small two or four-seat rotorcraft. The FAA agrees, and paragraph (b)(3) is revised to apply to nonintegral seats or to those seats "where floor rails or floor or sidewall attachment devices are used" to attach the seat to the airframe structure. Integral seats and bulkhead-mounted seats without floor or sidewall attachment devices and with continuous attachments such as rows of rivets or screws, etc., are excluded from the specific misalignment or preload in the test. A commenter recommends clear and specific guidance or advisory material to address integral seats and their dynamic tests. Advisory material for §§ 27.562 and 29.562 was previously drafted and comments invited (52 FR 20947; June 3, 1987). No comments were received. The recommended guidance information will be included in this advisory material which will be subject to further public review.

In addition, the explanation for the head impact criteria (HIC) equation stated in paragraph (c)(5) is adopted with a change that adds the word "form" to clarify that an ATD head form is used for the HIC.

Proposal 4. The notice proposed to revise § 27.785 by adding the static inertial load factors of § 27.561 and the dynamic conditions of § 27.562 to paragraph (a) as requirements to protect occupants from serious injury; to revise paragraph (b) to require each occupant seat, not just crew seats, to be equipped with a shoulder harness in conjunction with a safety belt (or torso restraint system per TSO C114); to revise paragraph (c) to require that the safety belt and shoulder harness have a single-point release; to revise paragraph (f) to use an occupant weight of at least 170 lbs; and to revise paragraph (g) to require a 60-40 percent safety belt-shoulder harness load distribution instead of the previous 60-60 distribution. The notice further proposed to add a new paragraph (i) defining the seating device system; a new paragraph (j) to allow controlled structural deformation or crushing of the seating device system to reduce occupant loads from the proposed emergency landing dynamic test conditions (the deformation or crushing must not interfere with rapid evacuation); and a

new paragraph (k) to define a litter and its design and installation standards. Dynamic test standards were not proposed for litters and berths. Identical revisions were proposed for § 29.785.

Several commenters favor the FAA proposal to require a shoulder harness for each seat. Accordingly, paragraph (a) is adopted as proposed.

A commenter proposes using either the term "shoulder harnesses" or the term "torso restraint" exclusively, but not both. "Shoulder harnesses" is retained because the existing airworthiness and operating standards use that term generically; however, for clarification, a sentence is added to paragraph (b) describing torso restraint and upper torso restraint.

One commenter proposes to apply the requirements of paragraph (b) to front seat or row occupants only and to require other occupants to have only lap or safety belts. The commenter's proposal is based on the following: (1) Rotorcraft crashes involve high vertical acceleration forces and relatively low horizontal acceleration forces; (2) passengers in flight do not like the discomfort and movement restrictions of a shoulder harness; (3) passengers become nervous when required to wear a shoulder harness; (4) passengers may become entangled in a shoulder harness during emergency egress; (5) passengers in normal category commercial operations are unduly restricted by a shoulder harness; and (6) mandatory retrofit of shoulder harnesses in the existing rotorcraft fleet creates an undue economic burden.

Report No. DOT/FAA/CT-85/11 indicates that emergency landing horizontal or longitudinal accelerations, while less than the vertical accelerations, are still significant and require restraint and support of the occupant. The horizontal forces cause the upper body to rotate forward increasing the potential for secondary impact with structure. This phenomenon was reported to be a major cause of severe injuries or fatalities which would be significantly reduced with use of a harness. A shoulder harness or upper torso restraint also maintains proper spinal alignment or support and, thus, greatly reduces the potential for spinal injury during an impact with significant vertical forces. The docket contains a figure entitled, "Use of Upper Torso Restraint Expands the Onset of the Serious and Fatal Injury Envelopes," which shows graphically that a shoulder harness and safety belt significantly improve occupant protection. One commenter also submitted information showing whenever shoulder harnesses

are installed, rotorcraft passengers surveyed use them 100 percent of the time. In addition, a single-point release is required for the safety belt and harness; the FAA is not aware of any significant impediment to evacuation caused by a harness; and the FAA did not propose a "retrofit" standard in the notice. For these reasons, the shoulder harness requirement in paragraph (b) with the exception of an editorial change for clarification is adopted as proposed.

Another commenter proposes to remove all references in § 27.785 to the dynamic test of § 27.562. The FAA does not agree since removing the § 27.562 reference in paragraph (b) would create a more restrictive rule by eliminating use of the HIC to accept minor head impact. Another commenter proposes to remove the reference § 27.562(c)(5) in paragraph (b). The HIC in § 27.562(c)(5) allow head impact and are acceptable and essential quantitative standards or limitations that can be applied uniformly wherever the head impacts the interior structure associated with a particular installation. AC 21-22 contains further information on the HIC. The reference must be retained; therefore, paragraph (b) is adopted as proposed.

Another commenter proposes removal of the portion of paragraph (c) which requires a single-point release for both the lap belt and the shoulder harness. The commenter's concern is that the proposal would require designs that prevent uncoupling of the shoulder harness from the lap belt and further prevent passengers from assuming the "brace" position during an emergency landing. The FAA has determined that upper body movement and/or a secondary impact during an emergency landing impact is a primary cause of serious injury. The docket contains information previously referenced which shows significant improvement in occupant protection when a shoulder harness is used. A properly restrained occupant is, therefore, much less likely to experience injury than one in the "brace" position. The amendment, however, does not preclude safety belt and harness designs that feature uncoupling of the shoulder harness from the lap safety belt provided a single-point release is employed in the belt-harness design. A shoulder harness provides a significant improvement in occupant protection, as previously stated, and should be used during takeoff and landing. Therefore, proposed paragraph (c) is adopted without change.

A commenter recommends retaining the present 60/60 load distribution

between the safety belt and harness in paragraph (g). The proposal to use a 60/40 distribution is based on SAE Aerospace standards and also accounts for 100 percent of the load. The application of 120 percent of the load is unnecessary and unrealistic in the light of this amendment. Therefore, the 60/40 distribution in paragraph (g) is adopted as proposed.

One commenter proposes that § 27.785 should be changed to specifically refer to paragraph (b) instead of the entire section. The FAA concurs, and § 27.561(b) is cited in paragraphs (a), (f), (f)(2), (g), and (k) for proper application of the standard.

Three other commenters propose to remove paragraph (f)(1) which refers to the pilot effort forces, since design conditions or loads applied by virtue of amended § 27.561(b) and new § 27.562 are considered sufficient seat design standards. The FAA does not agree because paragraph (f)(1) provides the minimum aft load design standard for the crew seat; therefore, paragraph (f)(1) is adopted as proposed.

A commenter wants to remove proposed paragraphs (i), (j), and (k) based on a recommended change to § 27.785(b) to remove reference to HIC. Since paragraph (b) is not changed, paragraphs (i) and (j) are necessary to complement the dynamic test standards and are, therefore, retained.

In addition to a recommendation to remove paragraph (k), two commenters state that proposed paragraph (k) is unclear regarding whether or not berths and litters making an angle greater than 15° with the rotorcraft longitudinal axis may be approved. The FAA chose 15° or less as the angle for which a padded headboard, etc., is required. Safety belts or straps without a padded headboard, etc., are acceptable for the remaining design conditions. That is, beyond a 15° angle the litter or berth must have the proper number and distribution of safety belts or straps to carry the specified static design loads for all directions. Berths and litters oriented at any angle with the rotorcraft longitudinal axis may be approved in accordance with the standards adopted. Paragraph (k) is clarified by dividing one sentence into three sentences that address litter orientation and the appropriate design requirements.

Proposal 6. The notice proposed a revision to § 29.561 that is equivalent to that proposed for § 27.561 except for the underfloor fuel tank standard in paragraph (d) which is unique to the part 29 standards. For general comments and editorial changes related to § 29.561, see Proposal 2.

In addition to the general comments, a comment was received specifically for § 29.561(b) and (c). The commenter recommends adoption of lower inertial load factors in paragraph (b) such as the factors adopted in Amdt. 25-64 for transport airplanes. These airplane inertial factors are 9.0g forward, 6.5g downward, 1.5g rearward, and so forth. The commenter also proposes to combine (vectorially) these inertial load factors but would limit the resultant to 9.0g in any direction. The commenter proposes an additional 1.33 factor for the forces that are imposed on the attachments of certain interior items of mass. If these comments are not adopted by the FAA, the commenter recommends combining (vectorially) whatever design inertial load factors are adopted rather than applying each factor separately.

The FAA notes that § 29.561 currently requires application of the load factor separately but the designer may choose to combine these factors vectorially into a resultant factor for structural substantiation. The static design inertial factors for transport airplanes proposed in Notice No. 86-11 consider the emergency landing impact characteristics for transport airplanes and are not appropriate for typical normal and transport category rotorcraft impact characteristics. The additional factor, 1.33, used in conjunction with the lower load factors for the attachments of certain interior items of mass is not necessary with adoption of the higher inertial factors proposed in the notice; i.e., the adopted criteria exceed that of the proposed change. In addition, the suggestion to combine (vectorially) the inertial factors but not to exceed 9.0g is, therefore, not adopted.

This same commenter also recommends a new paragraph (e) specifically to address an alternate approach in achieving an equivalent or greater level of occupant protection in relation to that contained in the commenter's proposed paragraph (b) change. The commenter proposes the following changes to paragraph (b): (1) to use the transport airplane inertial factors in Notice No. 86-11; (2) to combine vectorially two inertial factors not to exceed 9g when combined; and (3) to refer to the dynamic tests prescribed in § 29.562. That is, these three factors would replace the dynamic tests as a primary means of compliance. Section 21.21(b)(1) already provides a means to accept any alternative to a specific standard provided an equivalent level of safety is maintained. The FAA considers the commenter's

proposed paragraph (e) unnecessary and, therefore, it is not adopted.

Two commenters recommend that static design factors for exterior items of mass in paragraph (c) be the same as those in paragraph (b) for interior items. Collapse of a partition or significant collapse of or penetration into the occupied cabin space has not been identified as a significant problem in survivable rotorcraft accidents according to the information in Table 26, Report No. DOT/FAA/CT-85/11. Thus, items of mass external to the crew or passenger cabin may be designed to factors less than those for internal items. This recommendation is not adopted. Another commenter states a partition (or bulkhead, etc.) separating the exterior items of mass from the transport rotorcraft cabin should be substantiated for the loads imposed by the items of mass attached to the partition. The FAA agrees that items of mass such as those described in the standard directly attached to a partition should not become detached. The standards provide for this substantiation.

One commenter recommends specific higher inertial factors for paragraph (c), that is, 12g forward, 6g sideward, 12g downward, while retaining 1.5g upward to reduce hazardous movement of high mass items that are described in their proposals. Adopting higher inertial load factors than those proposed is beyond the scope of the notice; therefore, the inertial factors are adopted as proposed.

Proposal 7. The notice proposed to add to § 29.562 a new dynamic test standard for occupant seats in transport rotorcraft that is identical § 27.562. The emergency landing impact conditions for transport rotorcraft are equivalent to normal category rotorcraft conditions. See the comments and FAA response in Proposal 3. Section 29.562 is adopted with the same changes as noted in Proposal 3.

Proposal 8. The notice proposed to amend §§ 29.783 (d) and (g) by removing the general reference to § 29.561(b)(3). The design factors in that section have been significantly increased but those factors are not necessary for door designs. Therefore, the specific factors in present § 29.561(b)(3) are added to paragraph (d), and paragraph (g) refers to paragraph (d) for the design factors. The factors in the standards are used to evaluate surrounding fuselage structural deformations and impose design features, where necessary, to minimize the probability of jamming external doors and integral stair doors as a result of a minor crash landing and thereby facilitate passenger egress.

One commenter contends that doors and exits should be subject to the same design load factors as the occupant restraint system. The FAA does not agree because experience has shown the design standards presently in use have been satisfactory and should be retained for door designs.

Two other commenters question why cargo doors, other than those used as emergency exits, must meet the requirements of § 29.783(d). Typical rotorcraft doors, whether cargo or exit, are usually qualified as passenger exits and, therefore, must comply. However, the FAA agrees that "cargo or service doors not suitable for use as an exit in an emergency" may be excluded from compliance with the standard. Section 29.783(d), as adopted, adds a clause excluding certain cargo and service doors. This clause for cargo and service doors was extracted, in part, from the transport airplane door standard of § 25.783(g).

Another commenter proposes a 9g static load factor, in any direction, for §§ 29.783 (d) and (g). As noted before, the present design load factors, such as 4g forward, etc., have provided an adequate level of safety since a significant adverse service history on doors does not exist. Therefore, the amendment is adopted with changes as discussed.

Proposal 9. The proposals for §§ 27.785 and 29.785 are identical. For comments and the FAA response related to proposed § 29.785, see Proposal 4. The occupant seat, safety belt, shoulder harness, berth or litter standards for transport and normal rotorcraft are standards not affected by the size of the rotorcraft. No one objected to the application of common standards. Therefore, § 29.785 is adopted with the same changes as discussed in Proposal 4.

Proposal 10. The notice proposed to amend § 29.809 by revising paragraph (e) to add reference to § 29.783(d) for the appropriate ultimate inertial load factors for exits as well as doors of transport rotorcraft. The current design factors for exits are maintained by the amendment. See the comments on Proposal 8 for further information.

One commenter recommends that paragraph (e) remain unchanged. The FAA disagrees because without the reference to § 29.783(d), "minor crash landing" factors would not be defined, thus creating the potential for nonstandard application.

A commenter states that the load factors proposed in paragraph (e) are inconsistent with those proposed for occupants in § 29.561(b)(3) which are

much higher. The commenter recommends use of the emergency landing impact load factors in paragraph (e). Service history has shown that the load factors proposed in paragraph (e), such as 4g forward, provide an adequate level of safety to minimize the probability of jamming the emergency exits as a result of fuselage deformation. Therefore, the standard is adopted as proposed.

Economic Evaluation Summary

The FAA proposed to amend parts 27 and 29 of the FAR to require the installation of shoulder harnesses and seats incorporating energy attenuation features on all newly certificated rotorcraft. The amendments to improve occupant protection standards are the result of several specific proposals presented at the Rotorcraft Regulatory Review Conference in 1979, the recommendations of the NTSB, and the FAA aircraft crash dynamics program.

The FAA finds the amendments to §§ 27.561(c), 27.785(k), 29.561(c), 29.783, 29.785(k), and 29.809 will cause manufacturers to incur negligible testing costs in demonstrating compliance with these new standards. The FAA finds the remaining amendments will have a cost impact on manufacturers as well as operators.

For the purpose of the evaluation, those elements of amended §§ 27.561, 27.785, and new 27.562 having a cost impact have been examined as if they were a single amendment. The close interrelation of these amendments precludes clear separation. The amendments to §§ 29.561, 29.785 and new 29.562 having a cost impact have been evaluated in the same manner.

This evaluation indicates that adoption of the standards is expected to be cost beneficial. The final rule regarding shoulder harness and energy attenuating seats—the occupant restraint system—is expected to reduce fatalities and injuries sustained in otherwise survivable crashes from between 30 to 85 percent. The average annual monetary benefits of this final rule are estimated to be \$770,600 while the average annual costs are estimated to be \$411,900. The average annual net benefits of the final rule are expected to be \$358,700 and the present value of these net benefits over 10 years is estimated to be \$2.20 million.

International Trade Impact Analysis

The FAA has determined that this rule is not likely to result in a competitive trade advantage or disadvantage for U.S. manufacturers in domestic or foreign markets. Foreign manufacturers

are expected to comply with the certification standards of their largest export customer, the United States. The FAA believes that to remain competitive in overseas markets, foreign vendors will export a similarly equipped rotorcraft to both the United States and third world countries. Foreign and U.S. manufacturers are expected to pass the new certification costs on to consumers in their domestic and foreign markets.

Regulatory Flexibility Determination

The FAA has determined that these amendments will not have a significant impact, positive or negative, on a substantial number of small entities. According to FAA criteria, a small helicopter manufacturer is one that is independently owned and operated and has fewer than 75 employees. Using these criteria, only one U.S. manufacturer is considered small. Therefore, it is not possible for this rule to impact a substantial number of small entities.

Federalism Implications

The regulations adopted herein do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that these amendments are not major under Executive Order 12291. In addition, the FAA certifies that these amendments do not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. These amendments are considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the amendments, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects 14 CFR Parts 27 and 29:

Air transportation, Aircraft, Aviation Safety, Safety, Rotorcraft.

Adoption of the Amendment

Accordingly, parts 27 and 29 of the Federal Aviation Regulations (14 CFR parts 27 and 29) are amended as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By amending § 27.561 by revising paragraphs (b) (introductory text), (b)(3), and (c) to read as follows:

§ 27.561 General.

* * * * *

(b) The structure must be designed to give each occupant every reasonable chance of escaping serious injury in a crash landing when—

* * * * *

(3) Each occupant and each item of mass inside the cabin that could injure an occupant is restrained when subjected to the following ultimate inertial load factors relative to the surrounding structure:

- (i) Upward—4g.
- (ii) Forward—16g.
- (iii) Sideward—8g.
- (iv) Downward—20g, after intended displacement of the seat device.

(c) The supporting structure must be designed to restrain, under any ultimate inertial load up to those specified in this paragraph, any item of mass above and/or behind the crew and passenger compartment that could injure an occupant if it came loose in an emergency landing. Items of mass to be considered include, but are not limited to, rotors, transmissions, and engines. The items of mass must be restrained for the following ultimate inertial load factors:

- (1) Upward—1.5g.
- (2) Forward—8g.
- (3) Sideward—2g.
- (4) Downward—4g.

3. By adding a new § 27.562 to read as follows:

§ 27.562 Emergency landing dynamic conditions.

(a) The rotorcraft, although it may be damaged in an emergency crash landing, must be designed to reasonably protect each occupant when—

- (1) The occupant properly uses the seats, safety belts, and shoulder harnesses provided in the design; and

(2) The occupant is exposed to the loads resulting from the conditions prescribed in this section.

(b) Each seat type design or other seating device approved for crew or passenger occupancy during takeoff and landing must successfully complete dynamic tests or be demonstrated by rational analysis based on dynamic tests of a similar type seat in accordance with the following criteria. The tests must be conducted with an occupant, simulated by a 170-pound anthropomorphic test dummy (ATD), as defined by 49 CFR 572, subpart B, or its equivalent, sitting in the normal upright position.

(1) A change in downward velocity of not less than 30 feet per second when the seat or other seating device is oriented in its nominal position with respect to the rotorcraft's reference system, the rotorcraft's longitudinal axis is canted upward 60° with respect to the impact velocity vector, and the rotorcraft's lateral axis is perpendicular to a vertical plane containing the impact velocity vector and the rotorcraft's longitudinal axis. Peak floor deceleration must occur in not more than 0.031 seconds after impact and must reach a minimum of 30g's.

(2) A change in forward velocity of not less than 42 feet per second when the seat or other seating device is oriented in its nominal position with respect to the rotorcraft's reference system, the rotorcraft's longitudinal axis is yawed 10° either right or left of the impact velocity vector (whichever would cause the greatest load on the shoulder harness), the rotorcraft's lateral axis is contained in a horizontal plane containing the impact velocity vector, and the rotorcraft's vertical axis is perpendicular to a horizontal plane containing the impact velocity vector. Peak floor deceleration must occur in not more than 0.071 seconds after impact and must reach a minimum of 18.4g's.

(3) Where floor rails or floor or sidewall attachment devices are used to attach the seating devices to the airframe structure for the conditions of this section, the rails or devices must be misaligned with respect to each other by at least 10° vertically (i.e., pitch out of parallel) and by at least a 10° lateral roll, with the directions optional, to account for possible floor warp.

(c) Compliance with the following must be shown:

- (1) The seating device system must remain intact although it may experience separation intended as part of its design.

(2) The attachment between the seating device and the airframe structure must remain intact, although the structure may have exceeded its limit load.

(3) The ATD's shoulder harness strap or straps must remain on or in the immediate vicinity of the ATD's shoulder during the impact.

(4) The safety belt must remain on the ATD's pelvis during the impact.

(5) The ATD's head either does not contact any portion of the crew or passenger compartment, or if contact is made, the head impact does not exceed a head injury criteria (HIC) of 1,000 as determined by this equation.

$$HIC = (t_2 - t_1) \left[\frac{1}{(t_2 - t_1)} \int_{t_1}^{t_2} a(t) dt \right]^{2.5}$$

Where: $a(t)$ is the resultant acceleration at the center of gravity of the head form expressed as a multiple of g (the acceleration of gravity) and $t_2 - t_1$ is the time duration, in seconds, of major head impact, not to exceed 0.05 seconds.

(6) Loads in individual upper torso harness straps must not exceed 1,750 pounds. If dual straps are used for retaining the upper torso, the total harness strap loads must not exceed 2,000 pounds.

(7) The maximum compressive load measured between the pelvis and the lumbar column of the ATD must not exceed 1,500 pounds.

(d) An alternate approach that achieves an equivalent or greater level of occupant protection, as required by this section, must be substantiated on a rational basis.

4. By amending § 27.785 by revising paragraphs (a), (b), (c), (f), and (g) and by adding new paragraphs (i), (j), and (k) to read as follows:

§ 27.785 Seats, berths, safety belts, and harnesses.

(a) Each seat, safety belt, harness, and adjacent part of the rotorcraft at each station designated for occupancy during takeoff and landing must be free of potentially injurious objects, sharp edges, protuberances, and hard surfaces and must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the static inertial load factors specified in § 27.561(b) and dynamic conditions specified in § 27.562.

(b) Each occupant must be protected from serious head injury by a safety belt plus a shoulder harness that will prevent the head from contacting any injurious object except as provided for in

§ 27.562(c)(5). A shoulder harness (upper torso restraint), in combination with the safety belt, constitutes a torso restraint system as described in TSO-C114.

(c) Each occupant's seat must have a combined safety belt and shoulder harness with a single-point release. Each pilot's combined safety belt and shoulder harness must allow each pilot when seated with safety belt and shoulder harness fastened to perform all functions necessary for flight operations. There must be a means to secure belts and harnesses, when not in use, to prevent interference with the operation of the rotorcraft and with rapid egress in an emergency.

(f) Each seat and its supporting structure must be designed for an occupant weight of at least 170 pounds considering the maximum load factors, inertial forces, and reactions between occupant, seat, and safety belt or harness corresponding with the applicable flight and ground load conditions, including the emergency landing conditions of § 27.561(b). In addition—

(1) Each pilot seat must be designed for the reactions resulting from the application of the pilot forces prescribed in § 27.397; and

(2) The inertial forces prescribed in § 27.561(b) must be multiplied by a factor of 1.33 in determining the strength of the attachment of—

- (i) Each seat to the structure; and
- (ii) Each safety belt or harness to the seat or structure.

(g) When the safety belt and shoulder harness are combined, the rated strength of the safety belt and shoulder harness may not be less than that corresponding to the inertial forces specified in § 27.561(b), considering the occupant weight of at least 170 pounds, considering the dimensional characteristics of the restraint system installation, and using a distribution of at least a 60-percent load to the safety belt and at least a 40-percent load to the shoulder harness. If the safety belt is capable of being used without the shoulder harness, the inertial forces specified must be met by the safety belt alone.

(i) Each seating device system includes the device such as the seat, the cushions, the occupant restraint system, and attachment devices.

(j) Each seating device system may use design features such as crushing or separation of certain parts of the seats to reduce occupant loads for the emergency landing dynamic conditions of § 27.562; otherwise, the system must

remain intact and must not interfere with rapid evacuation of the rotorcraft.

(k) For the purposes of this section, a litter is defined as a device designed to carry a nonambulatory person, primarily in a recumbent position, into and on the rotorcraft. Each berth or litter must be designed to withstand the load reaction of an occupant weight of at least 170 pounds when the occupant is subjected to the forward inertial factors specified in § 27.561(b). A berth or litter installed within 15° or less of the longitudinal axis of the rotorcraft must be provided with a padded end-board, cloth diaphragm, or equivalent means that can withstand the forward load reaction. A berth or litter oriented greater than 15° with the longitudinal axis of the rotorcraft must be equipped with appropriate restraints, such as straps or safety belts, to withstand the forward load reaction. In addition—

(1) The berth or litter must have a restraint system and must not have corners or other protuberances likely to cause serious injury to a person occupying it during emergency landing conditions; and

(2) The berth or litter attachment and the occupant restraint system attachments to the structure must be designed to withstand the critical loads resulting from flight and ground load conditions and from the conditions prescribed in § 27.561(b).

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

5. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

6. By amending § 29.561 by revising paragraphs (b) (introductory text), (b)(3), (c), and (d) to read as follows:

§ 29.561 General.

(b) The structure must be designed to give each occupant every reasonable chance of escaping serious injury in a crash landing when—

(3) Each occupant and each item of mass inside the cabin that could injure an occupant is restrained when subjected to the following ultimate inertial load factors relative to the surrounding structure:

- (i) Upward—4g.
- (ii) Forward—16g.
- (iii) Sideward—8g.

(iv) Downward—20g, after the intended displacement of the seat device.

(c) The supporting structure must be designed to restrain under any ultimate inertial load factor up to those specified in this paragraph, any item of mass above and/or behind the crew and passenger compartment that could injure an occupant if it came loose in an emergency landing. Items of mass to be considered include, but are not limited to, rotors, transmission, and engines. The items of mass must be restrained for the following ultimate inertial load factors:

- (1) Upward—1.5g.
- (2) Forward—8g.
- (3) Sideward—2g.
- (4) Downward—4g.

(d) Any fuselage structure in the area of internal fuel tanks below the passenger floor level must be designed to resist the following ultimate inertial factors and loads, and to protect the fuel tanks from rupture, if rupture is likely when those loads are applied to that area:

- (1) Upward—1.5g.
- (2) Forward—4.0g.
- (3) Sideward—2.0g.
- (4) Downward—4.0g.

7. By adding a new § 29.562 to read as follows:

§ 29.562 Emergency landing dynamic conditions.

(a) The rotorcraft, although it may be damaged in a crash landing, must be designed to reasonably protect each occupant when—

- (1) The occupant properly uses the seats, safety belts, and shoulder harnesses provided in the design; and
- (2) The occupant is exposed to loads equivalent to those resulting from the conditions prescribed in this section.

(b) Each seat type design or other seating device approved for crew or passenger occupancy during takeoff and landing must successfully complete dynamic tests or be demonstrated by rational analysis based on dynamic tests of a similar type seat in accordance with the following criteria. The tests must be conducted with an occupant simulated by a 170-pound anthropomorphic test dummy (ATD), as defined by 49 CFR 572, Subpart B, or its equivalent, sitting in the normal upright position.

(i) A change in downward velocity of not less than 30 feet per second when the seat or other seating device is oriented in its nominal position with respect to the rotorcraft's reference system, the rotorcraft's longitudinal axis is canted upward 60° with respect to the impact velocity vector, and the

rotorcraft's lateral axis is perpendicular to a vertical plane containing the impact velocity vector and the rotorcraft's longitudinal axis. Peak floor deceleration must occur in not more than 0.031 seconds after impact and must reach a minimum of 30g's.

(2) A change in forward velocity of not less than 42 feet per second when the seat or other seating device is oriented in its nominal position with respect to the rotorcraft's reference system, the rotorcraft's longitudinal axis is yawed 10° either right or left of the impact velocity vector (whichever would cause the greatest load on the shoulder harness), the rotorcraft's lateral axis is contained in a horizontal plane containing the impact velocity vector, and the rotorcraft's vertical axis is perpendicular to a horizontal plane containing the impact velocity vector. Peak floor deceleration must occur in not more than 0.071 seconds after impact and must reach a minimum of 18.4g's.

(3) Where floor rails or floor or sidewall floor attachment devices are used to attach the seating devices to the airframe structure for the conditions of this section, the rails or devices must be misaligned with respect to each other by at least 10° vertically (i.e., pitch out of parallel) and by at least a 10° lateral roll, with the directions optional, to account for possible floor warp.

(c) Compliance with the following must be shown:

(1) The seating device system must remain intact although it may experience separation intended as part of its design.

(2) The attachment between the seating device and the airframe structure must remain intact although the structure may have exceeded its limit load.

(3) The ATD's shoulder harness strap or straps must remain on or in the immediate vicinity of the ATD's shoulder during the impact.

(4) The safety belt must remain on the ATD's pelvis during the impact.

(5) The ATD's head either does not contact any portion of the crew or passenger compartment or, if contact is made, the head impact does not exceed a head injury criteria (HIC) of 1,000 as determined by this equation.

$$HIC = (t_2 - t_1) \left[\frac{1}{(t_2 - t_1)} \int_{t_1}^{t_2} a(t) dt \right]^{2.5}$$

Where: $a(t)$ is the resultant acceleration at the center of gravity of the head form expressed as a multiple of

g (the acceleration of gravity) and $t_2 - t_1$ is the time duration, in seconds, of major head impact, not to exceed 0.05 seconds.

(6) Loads in individual shoulder harness straps must not exceed 1,750 pounds. If dual straps are used for retaining the upper torso, the total harness strap loads must not exceed 2,000 pounds.

(7) The maximum compressive load measured between the pelvis and the lumbar column of the ATD must not exceed 1,500 pounds.

(d) An alternate approach that achieves an equivalent or greater level of occupant protection, as required by this section, must be substantiated on a rational basis.

8. By amending § 29.783 by revising paragraphs (d) and (g)(1) to read as follows:

§ 29.783 Doors.

(d) There must be reasonable provisions to prevent the jamming of any external doors in a minor crash as a result of fuselage deformation under the following ultimate inertial forces except for cargo or service doors not suitable for use as an exit in an emergency:

- (1) Upward—1.5g.
- (2) Forward—4.0g.
- (3) Sideward—2.0g.
- (4) Downward—4.0g.

(g) * * *

(1) The door, integral stair, and operating mechanism have been subjected to the inertial forces specified in paragraph (d) of this section, acting separately relative to the surrounding structure.

9. By amending § 29.785 by revising paragraphs (a), (b), (c), (f), and (g) and by adding new paragraphs (i), (j), and (k) to read as follows:

§ 29.785 Seats, berths, safety belts, and harnesses.

(a) Each seat, safety belt, harness, and adjacent part of the rotorcraft at each station designated for occupancy during takeoff and landing must be free of potentially injurious objects, sharp edges, protuberances, and hard surfaces and must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the inertial factors specified in § 29.561(b) and dynamic conditions specified in § 29.562.

(b) Each occupant must be protected from serious head injury by a safety belt plus a shoulder harness that will prevent the head from contacting any injurious object, except as provided for in

§ 29.562(c)(5). A shoulder harness (upper torso restraint), in combination with the safety belt, constitutes a torso restraint system as described in TSO-C114.

(c) Each occupant's seat must have a combined safety belt and shoulder harness with a single-point release. Each pilot's combined safety belt and shoulder harness must allow each pilot when seated with safety belt and shoulder harness fastened to perform all functions necessary for flight operations. There must be a means to secure belt and harness when not in use to prevent interference with the operation of the rotorcraft and with rapid egress in an emergency.

(f) Each seat and its supporting structure must be designed for an occupant weight of at least 170 pounds, considering the maximum load factors, inertial forces, and reactions between the occupant, seat, and safety belt or harness corresponding with the applicable flight and ground-load conditions, including the emergency landing conditions of § 29.561(b). In addition—

(1) Each pilot seat must be designed for the reactions resulting from the application of the pilot forces prescribed in § 29.397; and

(2) The inertial forces prescribed in § 29.561(b) must be multiplied by a factor of 1.33 in determining the strength of the attachment of—

(i) Each seat to the structure; and

(ii) Each safety belt or harness to the seat or structure.

(g) When the safety belt and shoulder harness are combined, the rated strength

of the safety belt and shoulder harness may not be less than that corresponding to the inertial forces specified in § 29.561(b), considering the occupant weight of at least 170 pounds, considering the dimensional characteristics of the restraint system installation, and using a distribution of at least a 60-percent load to the safety belt and at least a 40-percent load to the shoulder harness. If the safety belt is capable of being used without the shoulder harness, the inertial forces specified must be met by the safety belt alone.

(i) Each seating device system includes the device such as the seat, the cushions, the occupant restraint system and attachment devices.

(j) Each seating device system may use design features such as crushing or separation of certain parts of the seat in the design to reduce occupant loads for the emergency landing dynamic conditions of § 29.562; otherwise, the system must remain intact and must not interfere with rapid evacuation of the rotorcraft.

(k) For purposes of this section, a litter is defined as a device designed to carry a nonambulatory person, primarily in a recumbent position, into and on the rotorcraft. Each berth or litter must be designed to withstand the load reaction of an occupant weight of at least 170 pounds when the occupant is subjected to the forward inertial factors specified in § 29.561(b). A berth or litter installed within 15° or less of the longitudinal axis of the rotorcraft must be provided with a padded end-board, cloth diaphragm, or

equivalent means that can withstand the forward load reaction. A berth or litter oriented greater than 15° with the longitudinal axis of the rotorcraft must be equipped with appropriate restraints, such as straps or safety belts, to withstand the forward reaction. In addition—

(1) The berth or litter must have a restraint system and must not have corners or other protuberances likely to cause serious injury to a person occupying it during emergency landing conditions; and

(2) The berth or litter attachment and the occupant restraint system attachments to the structure must be designed to withstand the critical loads resulting from flight and ground load conditions and from the conditions prescribed in § 29.561(b).

10. By amending § 29.809 by revising paragraph (e) to read as follows:

§ 29.809 Emergency exit arrangement.

(e) There must be means to minimize the probability of the jamming of any emergency exit in a minor crash landing as a result of fuselage deformation under the ultimate inertial forces in § 29.783(d).

Issued in Washington, DC, on November 3, 1989.

James B. Busey,
Administrator.

[FR Doc. 89-26532 Filed 11-9-89; 8:45 am]

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Federal Register

**Monday
November 13, 1989**

Part IV

Office of Personnel Management

**Federal Personnel Manual Letter 792-19,
Establishing a Drug-Free Federal
Workplace; Notice**

OFFICE OF PERSONNEL MANAGEMENT

Federal Personnel Manual Letter 792-19, Establishing a Drug-Free Federal Workplace

AGENCY: Office of Personnel Management.

ACTION: Response to comments; final publication; notice.

SUMMARY: The Office of Personnel Management publishes notice of the final version of Federal Personnel Manual Letter 792-19, Establishing a Drug-Free Federal Workplace prior to its issuance.

EFFECTIVE DATE: December 13, 1989.

FOR FURTHER INFORMATION CONTACT: Carrol Kinsey, (202) 632-5087.

SUPPLEMENTARY INFORMATION: This final Federal Personnel Manual Letter was developed in accordance with section 6(a)(1) of Executive Order 12564, A Drug-Free Federal Workplace, issued on September 15, 1986. On November 28, 1986, OPM issued Federal Personnel Manual (FPM) Letter 792-16, Establishing a Drug-Free Federal Workplace, to Executive branch agencies covered under the jurisdiction of Executive Order 12564. On March 9, 1987, OPM issued FPM Letter 792-17, amending three provisions of FPM Letter 792-16. On December 30, 1988, OPM issued FPM Letter 792-18, notifying agencies of actions they should take to bring their Drug-Free Workplace plans into compliance with section 628 of the Treasury, Postal, and General Government Appropriations Act of 1989, Public Law No. 100-440.

FPM Letters generally are advisory guidance for supervisors and personnel specialists to use as management tools and ordinarily would not be published under formal rulemaking procedures. In this FPM Letter, policies for Federal agencies and employees required by law or Government-wide regulation are stated in terms of "must," "shall," or "will." Policies which are not required by law or Government-wide regulation, but which are highly recommended, are stated in terms of "should." Policy guidance which is set forth for the agency's consideration is stated in terms of "may," "can," or "could."

The publication of the draft FPM Letter 792-19 in the Federal Register on April 6, 1989, did not mean that OPM was embarking upon a formal rulemaking. It afforded interested parties the opportunity to comment on the draft FPM Letter before its issuance in final form.

In response to that notice and opportunity for comment, OPM received

the 10 written comments discussed below. In recognition of the important role that may be played by interested members of the public even in providing their comments on advisory personnel guidance, OPM has considered the comments as indicated below and has made corresponding changes to the draft FPM Letter.

In preparing draft FPM Letter 792-19, OPM consolidated all of the existing FPM Letters on the subject of a Drug-Free Federal Workplace in one issuance. FPM Letter 792-19 is a compilation and update of FPM Letters 792-16, 792-17, and 792-18. It incorporates the text of the preceding FPM Letters and any amendments made necessary by subsequent legislation. This compilation is deemed necessary as a service to Federal agency officials and other interested parties and as an opportunity to update the original FPM Letter issued on November 28, 1986.

FPM Letter 792-16 followed both the language of Executive Order 12564 and pre-existing law and regulation. The first section of the Letter discussed its purpose and stated that the use of illegal drugs by Federal employees, whether on or off duty, cannot be tolerated and that the Federal government, as the nation's largest employer, must be in the forefront of the national effort to eliminate illegal drugs from the American workplace.

That FPM Letter went on to set forth agency responsibilities in drafting and implementing drug-free Federal workplace plans. Each agency head was required, pursuant to the Executive Order, to develop a plan for achieving the objective of a drug-free workplace, which contains a policy statement, an Employee Assistance Program, supervisory training, provision for employee self-referral, and provisions for identifying illegal drug users (including drug testing). The head of each agency was also required, pursuant to the Executive Order, to test employees in sensitive positions for the use of illegal drugs. The FPM Letter set forth recommendations regarding how agencies may carry out their drug testing programs and drug testing procedures in general. In addition, the Letter addressed the Executive Order mandate that agencies are to maintain statistical records on the number of employees and applicants tested and the number of confirmed positive test results, while removing personally identifying information from such records. The Letter also described the role of the Employee Assistance Program in a drug-free workplace program.

A sample employee acknowledgement of notice of an agency's drug-free

workplace program and a model Employee Assistance Program was attached to FPM Letter 792-16.

FPM Letter 792-17 was issued on March 9, 1987, as a brief supplement to FPM Letter 792-16. The language contained in FPM Letter 792-17 that amended FPM Letter 792-16 has been incorporated into the basic text of the portion of FPM Letter 792-19 that was taken from FPM Letter 792-16.

FPM Letter 792-18 was issued on December 30, 1988, as a notice to Federal agencies of the need to take action to bring their Drug-Free Workplace plans into compliance with a soon-to-be-effective provision of the Treasury, Postal, and General Government Appropriations Act of 1989, Public Law No. 100-440. The guidance contained therein has been incorporated into the FPM Letter for use by agencies that may be established in the future.

FPM Letter 792-19 also corrects typographical errors contained in FPM Letters 792-16, 792-17, and 792-18.

Provisions that have been rendered obsolete, inappropriate, or ineffective, by either the passage of time, subsequent legislative enactments, or revised OPM policy, have also been amended or deleted, as appropriate.

Finally, provisions of the National Drug Control Strategy issued by the President and the National Drug Control Policy Office on September 5, 1989, that set new requirements for Federal agencies in implementing the Drug-Free Federal Workplace program are incorporated in the final version of FPM Letter 792-19.

FPM Letter 792-19 supersedes and replaces FPM Letters 792-16, 792-17, and 792-18. Publication of the draft FPM Letter, receipt and consideration of comments, and publication of the final version of the FPM Letter complies with a court order entered in *NTEU v. Reagan*, Civ. No. 86-4058 (E.D. La.).

Response to Comments

Written comments in response to the Opportunity for Comment published April 6, 1989, were received from 10 individuals, organizations and Federal agencies. All written comments were reviewed and taken into consideration in the preparation of the final FPM Letter. This section summarizes major comments and the response of the Office of Personnel Management to them. Similar comments are considered together. Typographical, grammatical, and technical corrections have also been made to the publication. In addition, several telephone inquiries were made concerning the application of the FPM Letter to employees of Federal

contractors. The FPM system sets forth guidance for the management and supervision of Federal employees, not employees of Federal contractors.

A. General Concerns

1. Several commenters, including two employee unions, expressed their general disagreement with the policy underlying the drug-testing portion of the Drug-Free Federal Workplace program. One described it as a "witch hunt." Another opined that the drug testing program contained too much room for abuse and that it will be used to ruin outspoken employees. Another urged the re-examination of the motives behind drug testing. These commenters challenge the basic policy underlying the inclusion of drug testing as one of the elements of the Drug-Free Federal Workplace program set out in Executive Order 12564. The FPM Letter simply provides guidance to the agencies on the implementation of that policy. Section 6(a)(1) of the Executive Order required Director of OPM to issue the government-wide guidance embodied in the FPM Letter. This FPM Letter will be issued in conformity with that mandate.

2. One commenter stated that the FPM Letter goes beyond the scope of the Executive Order. OPM disagrees and believes that the FPM Letter does not exceed the limits of the Executive Order, except to the extent necessary to provide agencies with sufficiently detailed guidance to take appropriate personnel management actions consistent with Executive Order policies and to meet the requirements of intervening statutory enactments and Presidential directives.

3. One commenter, a Federal employee union, asked whether or not the publication of the FPM Letter in the *Federal Register* was a rulemaking under the terms of 5 U.S.C. 553. As noted in the supplementary information accompanying this publication, an FPM Letter is not a formal rule. It is interpretative guidance prepared by OPM to assist agency managers and personnelists in implementation of a program. While this, then, is not a formal rulemaking, it was published in draft form for comment, and those comments have been considered before publishing the final version of the FPM Letter, in accordance with the court's order in *NTEU v. Reagan*, Civ. No. 86-4058 (E.D. La.).

B. Random Testing

1. Several commenters objected to the random testing component of the program on constitutional grounds and asserted that it violates the 4th Amendment to the Constitution. One

commenter opposed it on the broader ground that it invades employee privacy. Another commenter stated that it was premature for the government to consider random drug testing of employees given the uncertain constitutionality of the practice and requested reconsideration or delay of the issuance of the FPM Letter until the question of the constitutionality of random drug testing was resolved. There have been numerous constitutional challenges to the random drug testing portion of the program in Federal courts across the country. Several of those courts have held that random drug testing of certain employees in specific types of sensitive positions is not a violation of the 4th Amendment to the Constitution (e.g., *National Federation of Federal Employees v. Cheney*, No. 88-5080 (D.C. Cir., August 29, 1989); *American Federation of Government Employees v. Skinner*, No. 87-5417 (D.C. Cir., September 8, 1989) and others have held the converse (e.g., *Connelly v. Newman*, No. 88-5085 DLJ (N.D. Cal., June 15, 1989); *National Treasury Employees Union v. Watkins*, No. 89-1006 JRP (D.D.C., June 16, 1989). Given the fact that the courts have decided the question of the constitutionality of particular agency programs established under the Executive Order in individual legal challenges, it cannot be said that those agencies with plans that pass constitutional muster should not go forward. The guidance afforded by the FPM Letter provides important assistance to those agencies whose plans are held to be constitutional. For those plans that have not been challenged, there is a presumption of constitutionality, and OPM's guidance will assist them as well.

2. Several commenters challenged the definition of employees in sensitive positions and the testing designated position (TDP) selection process.

One commenter suggested that the definition of an "employee in a sensitive position" and the criteria for selecting TDPs are grossly overbroad and vague. The definition of "employee in a sensitive position" that appears in the FPM Letter at section 3a(1) is exactly the same as the definition of that term set out in section 7(d) of Executive Order 12564. OPM believes that using that definition to determine the group of positions that might be subject to random testing and then using the TDP selection process outlined in section 3a(2)(ii) guides agencies to craft a narrow group of TDPs that comprise both those positions falling within the Executive Order definition of employees in sensitive positions and, from that group of positions, identify the positions

that have the *most direct* impact on public health, safety, or national security.

Another said that it was ridiculous to target law enforcement positions for random testing and that heavy equipment and motor vehicle operators were more likely to present safety hazards. The definition of employees in sensitive positions is not limited to law enforcement positions nor does it target those positions. Those positions are simply one group of positions that may be randomly tested if the agency head determines, through the TDP selection process, that they have a direct relation to public health, safety, or national security. In addition, under both the definition of employees in sensitive positions and the TDP selection process, heavy equipment and motor vehicle operators may well be included in an agency's TDPs.

Another opined that agency heads must consider the necessity for the random testing of employees holding sensitive positions in the agency given the level of drug use, the utility of other detection means, and then publish the basis for their decision to use random testing. In the cases in which random testing has been upheld as constitutional, it has been argued that both the level of drug use in the agency and the utility of other detection means should be considered before an agency may properly embark on random urinalysis. In those cases, the courts have held that establishing a baseline of drug use or examining the utility of alternative detection means were not prerequisites for drug testing. See, e.g., *National Federation of Federal Employees v. Cheney*, No. 88-5080 (D.C. Cir. August 29, 1989). Similarly, OPM does not believe that agency heads must consider the level of drug use or the utility of alternative detection means before instituting a drug testing program. While these are important factors that agency heads will certainly need to consider as they attempt to meet create a Drug-Free Workplace in their agencies, those considerations should not govern whether or not drug testing is begun. On the other hand, agency heads who have established Drug-Free Federal Workplace plans under Executive Order 12564 have included a discussion of the necessity for random testing their TDPs and the basis for their selection of those positions for random testing in their plans.

Another urged deletion of section 3a(1)(ii) of the FPM Letter because mere access to classified information is not sufficient to justify drug testing. This commenter urged that the type of

information and the degree of access should be examined before designating the position as a TDP. Those factors are certainly appropriate in determining whether or not to include particular positions as TDPs. Sufficient latitude is afforded in the definition of "employee in a sensitive position" set out at section 3a(1)(ii) of the FPM Letter (and section 7(d)(2) of Executive Order 12564) and the TDP selection process outlined at section 3a(2)(ii) of the FPM Letter to allow agency heads to consider those factors. In addition, as section 3a(1)(ii) of the FPM Letter simply restates, *verbatim*, the definition set out at section 7(d)(2) of the Executive Order, OPM sees no need to delete it. The same commenter urged the rewriting of section 3a(4) of the FPM Letter to standardize the TDP selection process to ensure non-discriminatory selection. Section 3a(3) of the FPM Letter already requires the neutral application of the TDP selection process and expressly urges agencies to ensure that "the selection process does not result in arbitrary, capricious, or discriminatory selections." Thus, OPM believes that the concerns of this commenter have already been addressed.

3. One commenter urged that section 3a, 3a(4), & 3a(5) of the FPM Letter be amended to return to the characterization of testing contemplated thereunder as "random" rather than "comprehensive." The term "comprehensive" was used in the proposed version of the FPM Letter to accommodate those few agencies that decide, due to the nature of their agency mission and the extremely sensitive nature of the positions held by their TDPs, to test *all* of the employees holding those positions rather than a randomly selected portion of those TDPs. Comprehensive testing includes random testing.

C. Reasonable Suspicion Testing

1. One commenter stated that a reasonable suspicion of illegal drug use should exist before any testing is undertaken by a Federal agency of its employees. While OPM believes that a strong reasonable suspicion testing program is an important part of any effective Drug-Free Workplace program, the public safety, health, or national security risk present for employees holding TDPs is strong enough to warrant suspicionless, random testing of employees holding those positions. Thus, reasonable suspicion will not be required for all testing.

2. One commenter stated that there should be no testing based upon a reasonable suspicion of illegal drug use. Testing should be based on probable

cause that an employee is impaired while on duty. The commenter stated that even if reasonable suspicion testing is upheld, the definition in the FPM Letter invites abuse. This commenter believed that it provides that a reasonably articulable belief or a pattern of misconduct can be used to punish employees without cause. To the contrary, OPM asserts that testing based upon a reasonable suspicion of illegal drug use is an accepted practice among many municipal governments for testing public employees holding sensitive positions. Probable cause, the standard at criminal law for instituting a search, is not required before the institution of an administrative search, such as a drug test. The definition used in the FPM Letter was developed through an examination of the definition of reasonable suspicion for administrative searches approved by the Federal courts over the years. It has withstood judicial scrutiny in several cases and should not be subject to the strict limitations of probable cause because the search at issue is undertaken for administrative, rather than criminal prosecution, purposes.

Another commenter urged OPM to amend section 3c of the FPM Letter to limit testing based upon a reasonable suspicion of illegal drug use either to reasonable suspicion of illegal drug use while on duty or reasonable suspicion that an employee's performance is affected by illegal drug use while on duty. This commenter stated that off duty drug use that doesn't affect job performance should not be the basis for government action. To the contrary, OPM believes that off duty drug use can be a proper basis for reasonable suspicion testing. Indeed, there are some positions within the Federal service, as noted by the Supreme Court in *National Treasury Employees Union v. Von Raab*, 109 S. Ct. 1384, 1393 (1989), which are incompatible with illegal drug use—on- or off-duty.

3. One commenter sought the deletion of section 3c(2)(iv) of the FPM Letter and asserted that agency management should not be required to make a decision on whether to direct a reasonable suspicion test based on information provided by credible and reliable sources. The commenter questioned that ability of the management official to make an objective determination of the reliability and credibility of a source. Management officials are frequently called upon to make determinations about the credibility and reliability of the sources of information they receive. They will be required to do no more than that in

determining whether reasonable suspicion of illegal drug use exists. In addition, under the plans developed by the agencies, a written record will be made of the circumstances leading to a reasonable suspicion determination and higher level concurrence will be required before an employee is directed to take a reasonable suspicion drug test.

D. Accident/Unsafe Practice Testing

1. One commenter suggested that section 3d of the FPM Letter on specific condition testing should be limited to those persons whose actions may have contributed to the accident or unsafe practice that is the basis for the test. The same commenter also suggested that some proof of improper conduct be required before an employee could be subject to testing. By the very terms of section 3d of the FPM Letter, specific condition (now accident or unsafe practice) testing is triggered by "an examination authorized by the agency regarding an accident or unsafe practice." OPM believes that testing directed under those conditions will ensure that only those persons involved in the accident or unsafe practice will be tested for illegal drug use.

2. One commenter registered a strong objection to safety reasons for accident and unsafe practice testing. This commenter noted that shipyards are inherently unsafe which would lead to more unwarranted tests because of the more dangerous work environment. Dangerous work environments are one of the most persuasive reasons for accident and unsafe practice testing. In order to protect Federal workers, their co-workers, and members of the public from injury and to help determine the cause of on-the-job mishaps, OPM believes that accident and unsafe practice testing is necessary.

3. The same commenter opined that employees who do not use illegal drugs will be more liable for accident or unsafe practice testing because users would be more likely not to report accidents in order to avoid testing. Reporting accidents is a responsibility that all Federal employees must meet. Co-workers and the public suffer if accidents are not reported. There are long-standing safety and accident reporting procedures in place to ensure timely reporting of accidents in the workplace. The drug testing program is unlikely to impede the proper reporting of workplace mishaps.

4. One commenter urged the amendment of section 4c of the FPM Letter to provide that the notice to employees that they are being directed to a drug test based upon an accident or

unsafe practice should also include the circumstances leading to the decision to test. OPM has added a final sentence to that section of the FPM Letter that adds that provision. The same commenter asked that we change the title of section 3d to "Accident/Unsafe Practice" to avoid confusion with section 4c. OPM has done so.

E. Follow-Up Testing During Rehabilitation

1. One commenter suggested that section 3e of the FPM Letter be amended to add, before the last sentence of that section: "Positive results obtained during counseling or rehabilitation can only be used to support discipline or an adverse action if the employee, at the time of the test, has been provided with a reasonable opportunity to have been rehabilitated." Rather than make the suggested change in this FPM Letter, OPM will discuss these issues in a later FPM issuance discussed below in the discussion of comments entitled L. Rehabilitation Act/Reasonable Accommodation.

F. Applicant Testing

1. One commenter stated that there is no justification for testing applicants for any positions. This commenter asserted that Background Investigations are required only for sensitive positions and that non-sensitive positions should not be subject to applicant testing. Section 3(d) of Executive Order 12564 authorizes agency heads to conduct applicant testing. Section 3f of the FPM Letter restates that authority and provides guidance to agency heads on how to implement an applicant testing program. As noted in that section, agency mission is a factor that agency heads should consider in determining the scope of applicant testing.

2. Another commenter urged that the third sentence of section 3f(2) as it appeared in FPM Letter 792-16 concerning applicants providing medical information be restored. OPM has restored the provision.

3. The same commenter stated that section 3f(4) of the FPM Letter should require agencies to deny Federal employment to those applicants who test positive for illegal drugs. That commenter also urged the inclusion of additional standards and guidance if discretion is left to the agencies. Section 1(c) of the Executive Order states that "[p]ersons who use illegal drugs are not suitable for Federal employment." Given that strongly stated standard, no additional standards that OPM might devise for inclusion in the FPM Letter are necessary. As noted previously, this FPM Letter provides guidance to the

agencies on how to implement Executive Order 12564 but does not state any additional requirements that do not already appear in that Order or in existing statute or regulation. Thus, no new requirement that agencies must deny employment to applicants who test positive for illegal drugs will be included in the FPM Letter.

G. Testing Procedures

1. Two commenters urged that additional protection should be included in the FPM Letter against false positives. One of them noted the example of employees that work with chemicals that they may inhale and cause their drug tests to turn up positive. The HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs provide the scientific and technical procedures that must be followed. Those guidelines require a Medical Review Officer (MRO) to determine the validity of alternative explanations for positive test results. Those procedures provide the necessary protection for Federal employees against positive test results that are not due to illegal drug use.

2. One commenter stated that the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs does not allow the employee to provide a new sample as a defense against erroneous test results. This commenter stated that the HHS Guidelines only allow a retest of a portion of the original sample that could be flawed. This commenter stated that this demonstrated an outrageous indifference to logic, merit principles, and due process. (Another commenter also noted that the procedure denied employee rights to due process.) The commenter stated that allowing the testing of a different sample would guarantee the protection of employee rights. The FPM Letter notes that agencies are required to follow the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs when conducting drug testing programs. OPM did not promulgate those guidelines. HHS is responsible for their issuance and their amendment, if appropriate. OPM supports the position taken in the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs that later testing of new samples would undermine the accuracy and validity of the testing process.

3. Another commenter stated that the procedure set out in section 4g(2) of the FPM Letter for providing a specimen under observation is embarrassing and degrading and it should only be done when there is reasonable evidence that an employee will alter or tamper with the test sample. The HHS Mandatory Guidelines for Federal Workplace Drug

Testing Programs and the FPM Letter make it clear that direct observation will occur only if there is reason to believe that an employee or applicant may alter or substitute the specimen. The FPM Letter also includes a list of examples of circumstances that may lead to that reason to believe that the employee or applicant may alter or substitute the specimen. OPM believes that the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs require a reasonable basis for direct observation and that the FPM Letter has incorporated those requirements.

4. Another commenter urged the use of the term "verified positive test result" rather than "confirmed positive test result" throughout the FPM Letter in order to avoid confusion with the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs. OPM has made the necessary changes.

H. Notices to Employees

1. One commenter urged that the FPM Letter include a requirement that, as a part of the process whereby notice of drug testing is given to employees, each agency must turn over the names of all bargaining unit employees holding TDPs to the union that represents them. Although this is a procedural issue that could arise, the interpretation and application of 5 U.S.C. 7114(b)(4), which addresses an agency's obligation to provide information to an exclusive representative, are outside the purview of this guidance. Consequently, this issue will not be addressed here.

I. Compliance With HHS Mandatory Guidelines

1. Two commenters noted that section 4e of the FPM Letter should be amended to note that adoption and compliance with the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs is mandatory, not permissive. OPM has made the necessary change to note that agency compliance with those guidelines is mandatory.

J. Confidentiality/Recordkeeping/Patient Records and Test Results

1. One commenter urged that section 4f(1) of the FPM Letter be amended to reflect the requirement of 42 U.S.C. 290ee-3, to-wit: "(1) Records of the identity * * * drug abuse prevention program conducted, regulated, or directly or indirectly assisted by a Federal agency must be kept confidential * * *." OPM has made the necessary amendments to that section.

2. The same commenter urged that section 4f of the FPM Letter be amended to clarify the restrictions on the release

of drug test results to third party adjudicators. OPM believes that there is no need to do anything further than restate the limitations on release of drug test results as they appeared in section 503 of the Supplemental Appropriations Act of 1987. That has been done.

3. The same commenter urged the amendment of the third line of section 4f(2)(ii) of the FPM Letter to add "patient" before "identifying." OPM has made the suggested change.

4. The same commenter suggested the amendment of the second sentence of section 4f(6) of the FPM Letter to add "prior written" before "employee consent" and replace "empowered to recommend or take action" with "having authority to take adverse personnel action against such employee." The second change should also be made in section 4f(7). OPM has made the suggested changes.

5. The same commenter suggested the deletion of section 4g of the FPM Letter to diminish any confusion that might be caused by paraphrasing the HHS Mandatory Guidelines on Federal Workplace Drug Testing Programs. OPM believes that no confusion exists between section 4g of the FPM Letter and the HHS Mandatory Guidelines on Federal Workplace Drug Testing Programs and believes that it is important to reiterate the protections included in them in the FPM Letter.

6. The same commenter noted that 42 CFR 2.32 requires written consent be obtained with a prescribed written statement and that the sample set out in Attachment 3 to the FPM Letter does not follow it. The commenter also suggested that the following be added to the sample consent form: "The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient." That provision has been added to the sample consent form.

7. The same commenter suggested that section 11 of Attachment 6 to the FPM Letter be changed from "Confidentiality of Client Records" to "Confidentiality of Alcohol and Drug Abuse Patient Records." Section 11 has been changed as suggested.

K. Discipline

1. One commenter objected to using a voluntary admission of a drug problem as a finding of illegal drug use and removal for the second offense as they violate nexus and reasonable accommodation requirements. OPM does not believe that either of the challenged provisions violate those requirements. Neither of the provisions eliminates the need for a nexus between adverse actions taken against

employees for misconduct and the efficiency of the service. That requirement is statutory in nature and is not affected by this FPM Letter. A voluntary admission of illegal drug use is simply one type of evidence that an employee uses illegal drugs. Executive Order 12564 requires the initiation of removal action for a second verified positive test result. Nexus must still be established in order for an adverse action based on misconduct to be sustained on appeal. Similarly, neither provision restricts the requirement that agencies must, in appropriate cases, provide reasonable accommodation of an employee's handicap.

2. Another commenter stated section 4d of the FPM Letter should state a strong policy in favor of agencies at least initiating action against employees who refuse testing. The provision has been changed to urge agencies to at least initiate action under those circumstances.

3. The same commenter suggested that section 5b of the FPM Letter be changed to "Mandatory Initiation of Removal Action." This change has been made.

4. The same commenter stated that section 5d of the FPM Letter should be deleted as it is not useful to list the available disciplinary actions. OPM believes that it is helpful to list the types of actions that may be taken based upon illegal drug use by an employee.

L. Rehabilitation Act/Reasonable Accommodation

1. Two commenters recommended that OPM take this opportunity to revise and clarify procedural guidance with regard to the agency obligation to accommodate employees identified as drug addicts and alcoholics. They urged institution of a flexible reasonable accommodation policy based on risk assessment. OPM is in the process of developing new guidance on the issue of reasonable accommodation. That new guidance will address the concerns expressed by these commenters.

M. Employee Assistance Programs

1. One commenter stated that some of the EAP consortia listed by city in the appendix to the FPM Letter are region-wide and that it would be more helpful to list them by region. OPM has prepared an updated listing of EAP consortia and has substituted it for the list set out in the proposed version of this FPM Letter.

2. The same commenter urged OPM not to use the names of the treatment providers, but to use titles and phone numbers and provide an updated list. The new list has been substituted for the one that appeared previously.

Provisions From The National Drug Control Strategy

On September 5, 1989, President Bush transmitted the 1989 National Drug Control Strategy to Congress. That strategy was prepared by the Office of National Drug Control Policy and transmitted to the Congress in accordance with section 1005 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 1504). The National Strategy contained two provisions directing that Federal agencies take certain action toward implementation of Executive Order 12564. On page 104 in Appendix B of the National Strategy, the agencies are given a schedule for implementation and guidance on reviewing their testing designated positions as the courts rule on legal challenges to the program. Those directives have been incorporated into new sections of the FPM Letter at section 2d and section 3a(6), respectively.

U.S. Office of Personnel Management
Constance Berry Newman,
Director.

FPM Letter 792-19

Office of Personnel Management

Federal Personnel Manual System

FPM Letter 792-19

(Published in advance of incorporation in FPM Supplement 792-2; RETAIN UNTIL SUPERSEDED)

SUBJECT: Establishing a Drug-Free Federal Workplace
Washington, DC 20415.

Heads of Departments and Independent Establishments:

1. PURPOSE

a. The use of illegal drugs by a significant proportion of the national workforce has major adverse effects on the welfare of all Americans, and results in billions of dollars of lost productivity each year. There is no reason to believe that there is a greater incidence of illegal drug use in the Federal workforce than in the private workforce. However, as the Nation's largest employer, the Federal government and its two million civilian employees must be in the forefront of our national effort to eliminate illegal drugs from the American workplace.

b. The use of illegal drugs by Federal employees, whether on or off the job, cannot be tolerated. Employees who use illegal drugs have three to four times more accidents while at work. Federal workers have a right to a safe and secure workplace, and all American citizens, who daily depend on the work of the Federal government for their

health, safety, and security, have a right to a reliable and productive civil service. Federal agencies must take action for the protection of individual drug users, their co-workers, and the society at large. In recognition of this, President Reagan, in Executive Order 12564, set forth the policy of the United States Government to eliminate drug use from the Federal workplace.

c. Agencies will establish a comprehensive drug prevention program which is humane, responsible, and effective. In recognition that employees who use drugs are, themselves, primarily responsible for changing their behavior, the program will include drug education and training, employee counseling and assistance, and voluntary drug testing. However, where appropriate, there will be mandatory drug testing and disciplinary action.

d. This will be a balanced program which emphasizes offering a helping hand to employees who are using illegal drugs. At the same time, it must be clear to all that continued illegal drug use by employees will not be tolerated and may result in disciplinary action up to and including removal.

e. Under the Executive Order, OPM is directed to issue government-wide guidance to agencies on the implementation of the terms of the Order.

2. AGENCY RESPONSIBILITIES

a. The head of each Executive agency shall develop a plan for achieving the objective of a drug-free workplace with due consideration of the rights of the government, and the employee. Agencies should make every reasonable effort to ensure workforce understanding of, and employee organization cooperation with, their drug prevention programs. Communications should emphasize the importance of the drug prevention program for agency mission and the community at large. Further, agencies should ensure that their drug prevention programs complement agency programs to deal with alcohol abuse and related employee problems.

b. Each agency plan shall include:

- (1) A statement of policy setting forth the agency's expectations regarding drug use and the action to be anticipated in response to identified drug use;

- (2) Employee Assistance Programs (EAP's) with high level direction, emphasizing education, counseling, referral to rehabilitation, and coordination with available community resources;

- (3) Supervisory training to assist in identifying and addressing illegal drug

use by agency employees (agencies may wish to include material on alcohol abuse in this training);

- (4) Provision for self-referral as well as supervisory referrals to counseling or rehabilitation with maximum respect for individual confidentiality consistent with safety and security requirements; and

- (5) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis in accordance with E.O. 12564 and the guidance contained below.

c. Agencies should consult with the Attorney General regarding their drug testing programs, as provided by Section 6(b) of the Order.

d. Each Federal agency will expedite the implementation of a Drug-Free Workplace plan. Those agencies with certified plans will fully implement them, consistent with the holdings in recent court decisions, by January 5, 1990, as required in the National Drug Control Strategy. This implementation is to include Employee Assistance Programs or other appropriate mechanisms, training for supervisors, rehabilitation for drug users, and drug testing. Agencies without currently certified plans will complete certification by January 5, 1990, and fully implement the plans by April 5, 1990.

3. AGENCY DRUG TESTING PROGRAMS

a. Comprehensive Testing for Employees in Sensitive Positions. In accordance with section 3(a) of Executive Order 12564, the head of each Executive agency shall establish a program to test for the use of illegal drugs by employees in sensitive positions.

(1) For purposes of this program, the term "employee(s) in a sensitive position" refers to:

- i. An employee in a position that an agency head designates Special Sensitive, Critical-Sensitive, or Noncritical-Sensitive under Chapter 731 of the Federal Personnel Manual or an employee in a position that an agency head designates as sensitive in accordance with Executive Order No. 10450, as amended;

- ii. An employee who has been granted access to classified information or may be granted access to classified information pursuant to a determination of trustworthiness by an agency head under Section 4 of Executive Order No. 12356;

- iii. Individuals serving under Presidential appointments;

- iv. Law enforcement officers as defined in 5 U.S.C. § 8321(20); and

v. Other positions that the agency head determines involve law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.

(2) The head of each agency has discretion to determine which sensitive positions for which comprehensive testing is authorized ought to be subject to such testing. This determination should be based on the nature of the agency's mission, its employees' duties, the efficient use of agency resources, and the danger that could result from the failure of an employee to discharge his or her duties adequately. Thus, who will actually be tested is a function of a two step analysis by the agency head.

i. First, the criteria set forth in Section 7(d) of Executive Order 12564 must be applied to all employees in the agency to determine which employees fall into the "pool" of employees potentially subject to drug testing: this is the pool of "employees in sensitive positions" as defined in the Executive Order. While the definition of the pool of "employees in sensitive positions" is the same from agency to agency, the testing of all employees in that pool may be appropriate for some agencies and not for others depending upon the duties of the positions and the missions of the agencies. If an agency head decides not to test all employees in the pool, then a further determination must be made as outlined below.

ii. Second, a determination must then be made from this pool as to which positions will actually be tested. For the sake of clarity within this guidance, this second group of positions is referred to as Testing Designated Positions (TDPs). Thus, an agency head may determine not to designate all sensitive positions as TDPs, but may limit testing to certain positions. For instance, this may include positions where national security considerations are present, as well as positions where there is a clear impact on public health or safety (e.g., air traffic controllers; operators of motor vehicles; medical, nursing, and related health care personnel) or positions relating to illegal drug control (e.g., law enforcement officers such as customs agents and drug enforcement agents). Other positions should be reviewed with particular care when one or more of the following are present as regular, recurring duties: operation or maintenance of any transportation, motor vehicle, aircraft, or heavy or other large mechanical or electrical equipment; work with explosive, toxic, radioactive, or other dangerous

materials; work with fluids or gases under heat or pressure; work by employees uniquely positioned to exploit highly sensitive computer or financial data for financial gain.

(3) When selecting TDPs, agencies should ensure that the selection process does not result in arbitrary, capricious, or discriminatory selections. Agencies must be able to justify their selection of TDPs as a neutral application of the selection criteria set forth in section 3(a)(2)(ii), above. Agencies are absolutely prohibited from selecting positions for drug testing on the basis of a desire to test particular individual employees.

(4) Individuals in TDPs may be selected for comprehensive testing in a variety of ways. For example, their names or social security numbers may be selected randomly by computer, they may be selected according to their birth dates, or they may be selected by the first letter in their surnames.

(5) Comprehensive testing may include unscheduled testing and random sampling of the employees within the group of TDPs. As an alternative to this method of selection, the head of an agency may, at his or her discretion, designate that all employees in TDPs shall be tested.

(6) In carrying out their responsibilities under Section 3 of Executive Order 12564, agency heads should review their testing designated positions periodically as significant new decisions on drug testing are issued by the courts.

b. **Voluntary Testing.** The head of each Executive agency shall establish a program for voluntary employee drug testing that allows employees to volunteer to participate in the drug testing program. An agency should afford an opportunity for any employee to step forward and be tested at a time determined appropriate by the agency.

c. **Reasonable Suspicion Testing.** In addition to the testing outlined in subsections (a) and (b) of this section, the head of each Executive agency is authorized to test an employee when there is a reasonable suspicion that any employee uses illegal drugs. For the purposes of this program "reasonable suspicion" is an articulable belief that an employee uses illegal drugs drawn from specific and particularized facts and reasonable inferences from those facts.

(1) Prompt supervisory training to assist in identifying and addressing illegal drug use by agency employees should be provided to supervisors as each agency develops and implements its agency program. Such training will make supervisors more sensitive to

employee behavior and help supervisors recognize those facts that give rise to a reasonable suspicion.

(2) "Reasonable suspicion" that an employee uses illegal drugs may be based upon, among other things:

- i. observable phenomena, such as direct observation of drug use and/or the physical symptoms of being under the influences of a drug;
- ii. a pattern of abnormal conduct or erratic behavior;
- iii. arrest or conviction for a drug related offense; or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;
- iv. information provided either by reliable and credible sources or independently corroborated; or
- v. newly discovered evidence that the employee has tampered with a previous drug test.

(3) Where testing is conducted based on reasonable suspicion, each agency should promptly detail in writing the circumstances which formed the basis of its determination that reasonable suspicion exists to warrant the testing. Such documentation should be retained in the adverse action file compiled by the agency.

d. **Accident/Unsafe Practice Testing.** The head of each agency is also authorized to test an employee for illegal drug use in an examination authorized by the agency regarding an accident or unsafe practice.

e. **Follow-up Testing.** The head of each agency may also require agency-administered follow-up drug testing during or after counseling or rehabilitation for illegal drug use through an Employee Assistance Program. While follow up testing may be undertaken as a part of counseling or rehabilitation under the Employee Assistance Program, only the results of agency-administered follow-up testing may be used, if verified positive results are obtained, to support an adverse action taken under section 5(d)(2) of the Executive Order. To insure its integrity, such agency-administered follow-up testing ought to be unannounced.

f. **Applicant Testing.** The head of each Executive agency is authorized, but not required, to test any applicant for illegal drug use. Agency heads who choose to test applicants for illegal drug use have a variety of options. For example, depending on the mission of the agency, an agency may wish to test all applicants for employment. On the other hand, an agency may determine that it will limit applicant testing to applicants for TDPs. Where an applicant must submit to a physical examination as a condition of employment, an agency

may wish to require a drug test as part of the physical examination procedures.

(1) Agencies should include notice of drug testing on vacancy announcements for those positions where drug testing is required. A sample notice provision for vacancy announcements or other information about the position would read as follows: "All applicants for this position will be required to submit to a urinalysis for illegal drug use prior to appointment in the Federal service."

(2) Where applicants are given preemployment physical examinations, drug testing may be performed as part of the physical examination procedures. Where no physical examinations are required, applicants should be contacted and directed to report to a designated contractor or agency facility for their drug test. Before a drug test is conducted, all applicants may be advised of the opportunity to submit medical documentation that may support a legitimate use of a specific drug. Aside from the general notice of the drug-testing requirement in vacancy announcements, applicants should receive as little notice as possible of the actual date and time of their drug test. A urine specimen should be taken no more than forty-eight hours after the applicant is contacted to set up the drug testing.

(3) In remote locations, applicants should be directed to report to the nearest contractor or agency facility. Agencies ought to provide for reimbursement to applicants for reasonable expenses incurred in travel to the drug testing facility. In extremely remote areas, the contractor may be required to travel periodically to the region to perform drug-testing of applicants.

(4) All applicants with verified positive test results should be refused employment.

g. **Hardship Exemption.** Agencies may choose to exempt certain positions from the drug testing program on the basis of hardship due to the remote location of the duty station of the positions, the unavailability of on-site testing personnel, or the lack of an appropriate site for test administration. Agencies should, however, use reasonable means to overcome such hardships.

4. DRUG TESTING PROCEDURES

a. **60 Day General Notice to All Employees.**

(1) Agencies which have not yet implemented a drug testing program shall ensure that at least sixty days elapse between a general one-time notice to all employees that a drug testing program is being implemented and the beginning of actual drug testing.

Such notice should indicate the purpose of the drug testing program, the availability of counseling and rehabilitation assistance through the agency's Employee Assistance Program, when testing will commence, the general categories of employees to be tested, and the general parameters of testing. Agencies may decide to include with their notice a description of their drug program or a copy of the internal personnel rules establishing their program.

(2) Any agency may take action as described in parts 3c and 3d. of this letter without reference to the 60 day notice requirement.

b. Special Notice to Covered Employees. Agencies should ensure a specific notice is given, in writing, to each employee in a TDP no later than thirty days before testing commences. We recommend that agencies obtain a written acknowledgment of receipt of the notice. A sample acknowledgment for agency consideration is provided as attachment 1 to this letter. The notice should contain the following information:

(1) The reasons for the urinalysis test, consistent with agency policy formulated in accordance with sections 1 and 3a. of this letter.

(2) Notice of the opportunity for an employee to identify himself voluntarily as a user of illegal drugs willing to undertake counseling and, as necessary, rehabilitation, in which case disciplinary action is not required.

(3) Assurance that the quality of testing procedures is tightly controlled, that the test used to confirm use of illegal drugs is highly reliable, and that test results will be handled with maximum respect for individual confidentiality, consistent with safety and security.

(4) Notice of the opportunity and procedures for submitting supplemental medical documentation that may support a legitimate use for a specific drug.

(5) The circumstances under which testing may occur, consistent with the policy set forth in section 3 of this letter.

(6) The consequences of a verified positive result or refusal to be tested, including disciplinary action.

(7) The availability of drug abuse counseling and referral services, including the name and telephone number of the local Employee Assistance Program counselor.

c. Notice to Employees Tested Under Specific Conditions. Employees being tested under conditions outlined in section 3c, 3d, and 3e will receive notice that includes information contained in section 4b., paragraphs (1), (3), (4), (6),

and (7). Employees being tested under conditions outlined in section 3c will also receive notice of the circumstances leading to the decision to test them for illegal drug use.

d. Agency Response to Persons—Refusing to Participate in a Required Drug Test.

(1) To maintain the integrity of the testing and enforcement program, agencies should initiate disciplinary action for employees who refuse to be tested. Such action may include, but is not necessarily limited to, removal of such employees as failing to meet a condition of employment and/or refusing to comply with the requirements of the agency's drug-free workplace program.

(2) Applicants who are not current employees and who refuse to be tested must be refused that employment.

e. Technical Guidelines for Drug Testing. The Secretary of Health and Human Services, as directed by Executive Order No. 12564, issued Mandatory Scientific and Technical Guidelines for Federal Employee Drug Testing Programs. 53 FR 11970, April 11, 1988. Agencies must conduct their drug testing programs in accordance with those scientific and technical guidelines.

f. Confidentiality of EAP Treatment Records and Drug Test Results. Agency drug testing programs under E.O. 12564 shall contain procedures to protect the confidentiality of 1) medical and rehabilitation records and 2) drug test results. These two classes of information are contained in different systems of records and are subject to different confidentiality requirements. However, both EAP treatment records and drug test results may be utilized in the program. Thus, both are discussed below.

(1) Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with performance of a drug abuse prevention program conducted, regulated, or indirectly assisted by a Federal agency must be kept confidential and may be disclosed only under limited circumstances and for specific purposes. Agencies may wish to refer to regulations issued by the Department of Health and Human Services (42 C.F.R. 2.1, et seq. (1987)) on maintaining the confidentiality of treatment records.

(2) Drug abuse treatment records may be disclosed without the consent of the patient only:

i. to medical personnel to the extent necessary to meet a genuine medical emergency;

ii. to qualified personnel for conducting scientific research,

management audits, financial audits, or program evaluation, with all patient identifying information removed from the data; or

iii. if authorized by an appropriate court order granted after application showing good cause.

(3) Any other disclosure may be made only with the written consent of the patient, and only under circumstances set out below. Such consensual disclosure may be made to the patient's employer for verification of treatment or a general evaluation of treatment progress.

(4) Agency drug testing programs should include confidentiality protections consistent with the above requirements. These protections should extend to drug testing results made a part of treatment and rehabilitation records.

(5) Accordingly, drug abuse treatment or rehabilitation records may not be otherwise disclosed by agencies without the consent of the employee involved. A sample consent for release of patient information during and after treatment or rehabilitation and a sample release memorandum are included in attachments 2 and 3, respectively. Any disclosure without such consent is strictly prohibited.

(6) As noted above, agencies will also obtain confirmed positive drug test results that are not part of treatment and rehabilitation records. As part of the drug testing procedure and in conformity with section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, confirmed positive test results may only be released without prior written employee consent to the agency's medical review official (as defined in the HHS Mandatory Scientific and Technical Guidelines for Federal Employee Drug Testing Programs), the administrator of the agency Employee Assistance Program (EAP), to the management official(s) having authority to take adverse personnel action against such employee and pursuant to the order of a court of component jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

(7) Under the HHS Mandatory Scientific and Technical Guidelines for Federal Employee Drug Testing, after examination and verification by the medical review official, confirmed positive test results will be forwarded to the EAP program administrator and to the management official(s) having authority to take adverse personnel action against such employee. Drug test results should be protected under the

provisions of the Privacy Act, 5 U.S.C. 552a, et seq., and should not be released in violation of that Act.

g. Privacy in Drug Testing. Agency drug testing procedures under E.O. 12564 must allow individual privacy unless the agency has reason to believe that a particular individual may alter or substitute the specimen to be provided. Agencies should refer to the HHS Mandatory Scientific and Technical Guidelines for Federal Employee Drug Testing Programs for the specific procedures to be followed in conducting drug tests.

(1) The sample shall be provided in a rest room stall or similar enclosure so that the employee is not being viewed while providing the sample. However, this requirement does not restrict the ability of the employer to control the test area and to take other actions to ensure that the employee does not substitute or tamper with the sample. For example, the employer may: (a) control the test area to ensure that samples have not been hidden for substitution; (b) prohibit the carrying of bags, luggage, briefcases, or other containers into the test area; (c) prohibit the wearing of coats and/or jackets in the test area; (d) station a testing official in the rest room outside the stall where visual observation is not possible, but where the official can monitor the setting for tampering; (e) examine the sample after it is provided for abnormalities in color, temperature, or other evidence that tampering may have occurred. Agencies should refer to the HHS Mandatory Scientific and Technical Guidelines for Federal Employee Drug Testing Programs for more specific information on sample collection.

(2) Generally, an employee or applicant may be required to provide a sample under observation only if there is reason to believe that the employee or applicant may alter or substitute the urine specimen. For example, employers may wish to require observation when facts and circumstances suggest that the person to be tested: (a) is an illegal drug user; (b) is under the influence of drugs at the time of the test; (c) has previously been confirmed by the agency to be an illegal drug user; (d) is seen to have equipment or implements used to tamper with urine samples; (e) has recently been determined to have tampered with a sample.

5. AGENCY ACTION UPON FINDING THAT AN EMPLOYEE USES ILLEGAL DRUGS

a. Drug Use Determination. The determination that an employee has used illegal drugs may be made on the

basis of direct observation, a criminal conviction, verified positive results of the agency's drug testing program, the employee's own admission, or other appropriate determinations.

b. Mandatory Initiation of Removal from Sensitive Positions. While removal of an employee confirmed to have used illegal drugs is authorized under the Executive Order, initiation of an action to remove the employee from the Federal service is required after a second determination that the employee uses illegal drugs. Sections 5(b) and 5(d), respectively, of Executive Order 12564. If occupying a sensitive position, the employee must not be allowed to remain on duty status in that position. Section 5(c) of Executive Order 12564. Removal of an employee occupying a sensitive position who is determined to use illegal drugs may be necessary if there are no non-sensitive positions to which the employee may be transferred in the agency, unless the agency head determines that maintaining the employee in the sensitive position would not pose a danger to public health or safety or the national security.

c. Mandatory EAP Referral. Upon reaching a finding that an employee uses illegal drugs, agencies will refer the employee to an Employee Assistance Program and give the employee an opportunity to undertake counseling and rehabilitation activities. Section 5(a) of Executive Order 12564. While agencies should provide reasonable support and assistance to employees who demonstrate a desire to become drug-free, the ultimate responsibility to be drug-free rests with the individual employee.

d. Discretionary Disciplinary Actions. Upon the first confirmed determination that an employee uses illegal drugs, there is a range of disciplinary actions available to an agency, from a written reprimand to removal. Except for employees who voluntarily identify themselves as users of illegal drugs, obtain appropriate counseling and rehabilitation, and thereafter refrain from illegal drug use, agencies are required to initiate some form of disciplinary action against employees who are found to use illegal drugs. Section 5(b) of Executive Order 12564. Agencies have discretion in deciding what disciplinary measures to initiate, consistent with the requirements of the Civil Service Reform Act and other appropriate factors. Among the disciplinary measures available to agencies are the following:

- (1) Reprimanding the employee in writing.
- (2) Placing the employee in an enforced leave status, consistent with

the procedural requirements of 5 C.F.R. §§ 752.203 or 752.404 as appropriate.

(3) Suspending the employee for fourteen days or less consistent with the procedural requirements in 5 C.F.R. § 752.203.

(4) Suspending the employee for 15 days or more consistent with the procedural requirements in 5 C.F.R. § 752.404.

(5) Suspending the employee, consistent with the procedural requirements in 5 C.F.R. § 752.404, until such time as he or she successfully completes counseling or rehabilitation or until the agency determines that action other than suspension is more appropriate to the individual situation.

(6) Reducing the employee in grade consistent with the procedural requirements in 5 C.F.R. § 752.404.

(7) Removing the employee from Federal service, consistent with the procedural requirements of 5 C.F.R. § 752.404, for: verified illicit use of an illegal drug; refusal to take a drug test authorized by E.O. 12564; refusal to obtain or successfully complete counseling or rehabilitation as required by the Executive Order; or once having completed counseling or rehabilitation, failing to refrain from illegal drug use.

(8) Initiating action to remove the employee from Federal service is mandatory upon a second verified finding of illegal drug use. Section 5(c) of Executive Order 12564.

e. Preponderance of Evidence Requirement. Agencies are reminded that any action, including removal, taken against an employee under title 5 United States Code, Chapter 75, must be supported by a preponderance of the evidence. Care should be taken in the conduct of tests and the handling of testing samples to ensure that requirements of evidentiary proof may be met.

6. STATISTICAL REPORTING

Agencies shall keep statistical records on: (1) the number of employees tested and the number of employees with verified positive tests; and (2) the number of applicants tested and the number of applicants with verified positive tests. Personally identifying information in these statistical records is strictly prohibited. The HHS Mandatory Scientific and Technical Guidelines for Federal Employee Drug Testing Programs contain additional requirements for statistical reporting.

7. EMPLOYEE COUNSELING AND ASSISTANCE

a. Program Requirement. Federal agencies are required by Public Law 92-

255, as amended; Public Law 99-570; and by 5 C.F.R. Part 792 to establish programs for appropriate prevention, treatment and rehabilitation of Federal civilian employees with drug abuse problems. Agencies are authorized to establish Employee Assistance Programs to meet this mandate.

b. EAP Requirement. Executive Order 12564 identifies Employee Assistance Programs as an essential element to an agency's plan to achieve a drug-free workforce, and explicitly states that agencies shall refer all employees found to be using illegal drugs to their Employee Assistance Program for assessment counseling, and referral for treatment or rehabilitation as appropriate.

c. EAP Role. Employee Assistance Programs play an important role in identifying and resolving employee substance abuse by: demonstrating the agency's commitment to eliminating illegal drug use; providing employees an opportunity, with appropriate assistance, to discontinue their drug use; providing educational materials to managers, supervisors and employees on drug abuse issues; assisting supervisors in confronting employees who have performance and/or conduct problems which may be based, in whole or in part, on substance abuse; assessing employee-client problems and making referrals to appropriate treatment and rehabilitation facilities; and following up with individuals during the rehabilitation period to track their progress and encourage successful completion of the program.

d. EAP Elements. In keeping with Executive Order 12564, agencies should ensure that:

(1) EAP's are available to all employees, including those located outside of the Washington metropolitan area and major regional cities. Agencies are encouraged to explore a variety of means for meeting this requirement, including private contractors and cooperative arrangements with other Federal agencies, State and local governments, and non-profit organizations.

(2) At sites where it is not feasible to establish a continuing EAP, agencies should arrange for employee access on a "needs" basis to comparable local resources or, through travel or private telephone calls, to services of established EAP's in other locations.

(3) EAP's, whether in-house or operated through contract, are adequately staffed with fully qualified individuals who can:

i. Provide counseling and assistance to employees who self-refer for treatment or whose drug tests have been

verified positive, and monitor the employees' progress through treatment and rehabilitation;

ii. Provide needed education and training to all levels of the organization on types and effects of drugs, symptoms of drug use and its impact on performance and conduct, relationship of the employee assistance program with the drug testing program, and related treatment, rehabilitation, and confidentiality issues;

iii. Ensure that the confidentiality of test results and related medical and rehabilitation records are maintained in accordance with the specific requirements contained in Public Laws 92-255 and 93-282, with regulations published in 42 C.F.R., part 2, and with guidance contained in section 4 of this letter.

(4) Adequate treatment resources have been identified in the community in order to facilitate referral of drug abuse clients.

(5) All employees in the agency are informed about the EAP and its services.

(6) The Employee Assistance Program plays an appropriate role in the development and implementation of the agency's Drug-Free Workplace program. EAP's should not be involved in the collection of urine samples or the initial reporting of the results of drug tests, but rather be a critical component in the agency's efforts to counsel and rehabilitate drug-abusing employees, as well as in educating the workforce on drug abuse and its symptoms.

e. Further EAP Assistance.

(1) Attachment 4 provides a list of consortia throughout the United States. Agencies wishing to join an existing consortium should contact the individual listed regarding that possibility.

(2) Attachment 5 provides the names and addresses of agencies and organizations which can be contacted regarding treatment facilities and education materials throughout the U.S.

(3) The Model Employee Assistance Program provided as attachment 6 addresses those functions OPM considers essential for an EAP to provide in support of the President's drug-free workplace initiative. The model is intended to be of use to agencies in developing new EAP's and in assessing the adequacy of existing programs. OPM's Employee Health Services Branch (Tel. (FTS/202) 632-5558) is available for technical assistance on these provisions.

8. COMPLIANCE WITH SECTION 628 OF THE TREASURY, POSTAL, AND GENERAL GOVERNMENT APPROPRIATIONS ACT OF 1989

a. Background Information. On September 22, 1988, President Reagan signed into law the Treasury, Postal, and General Government Appropriations Act of 1989, Public Law No. 100-440. Section 628 sets forth drug-free workplace requirements for Federal departments, agencies, and instrumentalities. Section 8131(c) of the Defense Appropriations Act (Pub. L. No. 100-463), which was signed into law on October 1, 1988, extended the effective date of section 628 until January 16, 1989.

b. Basic provision. Section 628 provides that:

No department, agency, or instrumentality of the United States receiving appropriated funds under this Act for fiscal year 1989, or under any other Act appropriating funds for fiscal year 1989, shall obligate or expend such funds unless such department, agency, or instrumentality has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its workplaces are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act), by the officers and employees of such department, agency, or instrumentality.

c. Relationship to Executive Order 12564. Executive Order (E.O.) 12564, dated September 15, 1988, required agencies to adopt drug-free workplace plans prohibiting the "use" of controlled substances contained in Schedules I and II, as defined in 21 U.S.C. 802(6) and listed in part B, subchapter 13 of that title. In order to comply with section 628, agencies may modify their drug-free workplace plans to cover (i) "possession, or distribution," in addition to "use," and (ii) controlled substances contained in Schedules III through V, in addition to Schedules I and II.

d. Limitation. The inclusion of all controlled substances among the scope of drugs covered under a drug-free workplace plan does not license agencies to test for drugs other than Schedules I and II controlled substances now authorized (such as marijuana, opiates, cocaine, phencyclidine, and amphetamines).

e. Agency Responsibilities:

(1) Agencies which were covered by section 628 are required to comply with its provisions by January 16, 1989. All agencies which are covered by E.O. 12564 are included within the scope of section 628; however, the scope of

section 628 is broader than E.O. 12564. If agency personnel are not sure whether or not an agency is covered by section 628, they should consult with their agency General Counsel.

(2) If an agency or instrumentality is in the Executive Branch, and is not covered by E.O. 12564, but it is now required to produce and administer a written policy to satisfy the provisions of section 628, the agency or instrumentality may wish to develop its policy in conformity with E.O. 12564, the Department of Health and Human Services (HHS) Mandatory Scientific and Technical Guidelines for Federal Employee Drug Testing Programs, and this FPM Letter. Although an agency is not required by section 628 to follow the above mentioned guidelines and the Executive Order, it is recommended that agencies do so in order to help their written policies be legally sustained.

(3) Agencies which wish to implement section 628 by amending their existing drug-free workplace plans may do so by adopting the appendix to this FPM Letter as an appendix to their plan. Agencies are not required to submit this amendment to HHS for certification or approval.

(4) Agencies which have already submitted their drug-free workplace plans to HHS for certification are not required to re-submit plans to HHS which have been amended to incorporate the provisions of section 628.

f. Agency Compliance. Agencies or instrumentalities failing to comply with section 628 by January 16, 1989, may be in violation of the Anti-deficiency Act. Agencies or instrumentalities which anticipate problems with compliance should immediately consult with their General Counsel.

Constance Berry Newman,
Director.

Appendix

1. The (agency name) hereby adopts the following amendments to the Drug-Free Workplace plan referenced and attached.

a. The following language is adopted as a free standing paragraph at the end of the section in the plan entitled "policy" or "statement of policy":

It is (agency name) policy that its workplace be free from the illegal use, possession, or distribution of controlled substances, (as specified in Schedules I through V, as defined in 21 U.S.C. 802(6) and listed in Part B, Subchapter 13 of that Title) by the officers and employees of (agency name). The possession and distribution of controlled substances will be dealt with

promptly in accordance with legal and administrative disciplinary procedures. However, the policy's primary goal is to ensure that illegal drug use is eliminated and that the (agency name) workplace be safe, healthful, productive, and secure.

b. In any references to grounds for "reasonable suspicion testing", the term "trafficking" shall also mean "distribution".

c. In addition to all grounds contained in this plan, there shall be grounds for reasonable testing of an employee if the employee is the focus of a criminal investigation into the illegal use, possession, or distribution of controlled substances.

d. Where authorities and guidance are cited in the plan as references, the following authority and guidance are added:

(i). Authority: Section 628 of the Treasury, Postal Service, and General Government Appropriations Act of 1989, Pub. L. 100-440, as amended.

(ii). Guidance: Office of Personnel Management (OPM) Federal Personnel Manual (FPM) Letter 792-18, December 30, 1988, setting forth guidelines to agencies, departments, and instrumentalities in establishing a drug-free workplace pursuant to Pub. L. 100-440.

2. This amendment is effective upon the signature of the agency head or the senior management official authorized to sign for the agency head.

Date _____

Agency Head or Senior Management Official

Attachment 1 to FPM Letter 792-19

Sample

[Agency Name]

Acknowledgement of Notice to Employees Whose Position is Designated Sensitive for Drug Testing Purposes

I acknowledge receiving notice of the establishment of (agency name)'s employee drug testing program. I understand that I may be selected for screening by urinalysis testing for the presence of controlled substances. I understand that a verified positive result of that testing or refusal to submit to testing may result in disciplinary action up to and including dismissal from the Federal service.

I have read the notice announcing the establishment of an employee drug testing program.

Printed or Typed Name _____

Signature of Employee _____

Date _____

Attachment 2 to FPM Letter 792-19

Sample

Consent For Release of Patient Information During or After Treatment or Rehabilitation

I, _____ (Employee/Patient name), hereby consent to the disclosure of

information concerning my progress in terminating illegal drug use. I authorize the _____ (Treatment/Rehabilitation Facility) to disclose that information to _____ (Name), director of the Employee Assistance Program at _____ (Name of Agency) and to _____ (Name of supervisor), my supervisor and to the agency Medical Review Official for drug use monitoring under Executive Order 12564, which provides for a drug-free Federal workplace.

I understand that this consent is subject to revocation at any time, except to the extent that action has been taken in reliance thereon, and that it will expire without express revocation upon _____ (date, event, condition).

This consent to disclose the above-described treatment records was freely given, without reservation, for the purpose set out above.

(Signature of employee/patient) _____

(Date on which consent is signed) _____

Clause for Use if Employee is a Minor or Legally Incompetent

I, _____ (Name), the [parent/legal guardian or personal legal representative] of the above named employee/patient, hereby consent to the aforementioned release of information on his/her behalf.

(Signature) _____

(Date) _____

Attachment 3 to FPM Letter 792-19

Sample

Release Memorandum

Subject: Release of Patient Information

From: [Program making the disclosure.]

To: [Name or title of the person or organization to which the disclosure is to be made.]

In accordance with the attached "Consent for Release of Patient Information," we have released information to you on [Patient's name].

This information has been disclosed to you from records whose confidentiality is protected by Federal law. See 42 U.S.C. § 290ee-3. Federal regulations, at 42 CFR part 2, prohibit you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by those regulations. A general authorization for the release of medical or other information is NOT sufficient for this purpose.

The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient. (Note: This memorandum is substantially the same as the one appearing in Appendix D of FPM Supplement 792-2.)

Attachment 4 to FPM Letter 792-19
OPERATING EAP CONSORTIA CONTACTS

Geographic location	Lead agency	Point of contact	FTS/Area code
Anchorage, AK	FAA	James Oliver	(907) 271-5875
Atlanta, GA	PHS	Regina Bronson	242-0406
			(404) 331-0406
Boston, MA	OPM	Jody Hubert	835-6533
Upstate NY	HHS	Robert Pollio	264-2586
Chicago, IL	PHS	Frances Wence	886-4215
Cincinnati, OH	PHS	Frances Wence	886-4215
Dallas, TX	PHS	Rosalie K. Phillips	729-3577
Denver, CO	PHS	Dr. R. Lortscher	776-0078
Kansas City, MO	CASU	John McClay	867-3501
Long Island, NY	HHS	Robert Pollio	264-2586
State of Michigan	PHS	Frances Wence	886-4215
State of New Jersey	HHS	Robert Pollio	264-2586
New York City, NY	HHS	Robert Pollio	264-2586
Philadelphia, PA	HHS	Brenda Wells	596-4757
Seattle, WA	Army Corp of Engineers	John Barrett, Jr.	(206) 764-3568
Puerto Rico/Virgin Isl	HHS	Robert Pollio	264-2586
Washington, DC	PHS	Peter Mazzelle	443-4357

Attachment 5 to FPM Letter 792-19*Treatment Facilities Directories*

1. *National Directory of Drug Abuse and Alcoholism Treatment and Prevention Program*, Stock No. 017024-01252-1, Cost: \$16.00. Available from: Superintendent of Documents, Government Printing Office, Washington, DC 20402, Tele: (202) 783-3238
2. *Washington Metropolitan Area Directory of Alcohol/Drug Treatment Resources*, OPM WPS-01, September 1984, No Cost. Available from: Office of Personnel Management, Employee Health Services Branch (PSOG), 1900 E. Street, N.W., Room 7H39, Washington, DC 20415, Tele: (202) 632-5558
3. *Coping Catalog* (listing resources available in the Washington Metropolitan Area for alcohol, drugs and other addictions problems) Updated catalog expected to be available December 1986. Cost to be determined. Available from: The Washington Area Council on Alcohol and Drug Abuse, 1221 Massachusetts Ave., N.W., Washington, DC 20005, Tele: (202) 783-1300

Attachment 6 to FPM Letter 792-19*Model Employee Assistance Program in Support of a Drug-Free Workplace*

1. *Purpose.* To implement fully an effective Employee Assistance Program (EAP) within (agency) which provides short term counseling and referral services to employees with drug problems. This is in keeping with the President's policy, set forth in Executive Order 12564, to eliminate drug use from the Federal workplace and to offer an opportunity for rehabilitation to users of illegal drugs. This model is intended to supplement ongoing employee assistance programs which, in addition to drug abuse, address alcohol abuse and other employee problems.

2. *Background.* Public Law 92-255, as amended, requires Federal agencies to develop and maintain appropriate prevention, treatment and rehabilitation programs and services for drug abuse among Federal employees. Regulations implementing

this requirement are contained in Title 5, Code of Federal Regulations (CFR) Part 792. Guidance is further provided in Subchapters 5 and 6 of Federal Personnel Manual (FPM) Chapter 792, and FPM Supplement 792-2. Executive Order 12564 of September 15, 1986, established further requirements for agencies and employees in order to obtain a drug-free Federal Workplace. On October 27, 1986, the President signed into law the Omnibus Drug Enforcement, Education, and Control Act of 1986, P.L. 99-570. That law reiterates Congressional concern about the prevention of illegal drug use and the treatment of Federal employees who use drugs.

3. *Objective.* The objective of the EAP is to assist employees with drug problems to find treatment, to follow up with them during recovery and rehabilitation, and to help them remain drug free.

4. Policy.

A. As an employer, the (agency) is concerned with the wellbeing of its employees, the maintenance of the workforce productivity, and the preservation of a safe and secure workplace. The use of illegal drugs by (agency) employees, whether on or off the job, is inconsistent with these goals and will not be tolerated.

B. The (agency) stands ready to assist employees in becoming drug free.

C. Employees who are users of illegal drugs are encouraged to seek counseling and other appropriate assistance voluntarily, including that available through the (agency's) Employee Assistance Program.

D. The confidential nature of client records will be safeguarded and only disclosed in accordance with the confidentiality provisions of Title 42 CFR, Part 2.

E. To the extent feasible, program services will be provided to family members dealing with the drug problem of an employee, or to an employee dealing with the drug problem of a family member.

5. Program Responsibilities.

A. *Agency Employee Assistance Program Administrator.* The Employee Assistance Program Administrator has the lead role in ensuring that the (agency's) EAP program meets the requirements of E.O. 12564, and is responsible for the development, implementation and review of the agency

EAP. In addition to supervising the headquarters EAP Coordinator and counselor(s), the Administrator will provide advice and assistance in establishing field office EAP's. The EAP Administrator will advise agency components on the submission of annual statistical reports and will prepare consolidated reports on the agency's EAP activity for submission to the Office of Personnel Management on a fiscal year basis.

B. Employee Assistance Program Coordinators.

(1) The Employee Assistance Program Coordinator has responsibility for implementing and operating the EAP within an agency component, such as the Headquarters office or a field installation. More than one coordinator may be deemed necessary, depending on the size of the assigned component. Where the EAP services are contracted out, the coordinator has responsibility for monitoring the contractor performance and verifying services rendered within (agency). The person(s) selected for such assignments will be allocated sufficient official time to:

(a) Implement effectively the agency employee assistance policy and program as well as to assist in the development and implementation of the agency drug testing program as it relates to the counseling and rehabilitation of drug-abusing employees;

(b) Determine appropriate supervisory training and other activities needed to educate and inform the workforce about drugs and symptoms of drug abuse;

(c) Develop and maintain counseling capability (through personnel, medical, or other counseling resource, including contracting out);

(d) Establish liaison with community education, treatment and rehabilitation facilities; and,

(e) evaluate the program and report to management on results and effectiveness.

C. *Employee Assistance Counselors.* (1) In some instances, the EAP Coordinator may have the necessary skills, time and motivation to function as the Employee Assistance Counselor. The Employee Assistance Counselor serves as the initial point of contact for employees who ask or are

referred for counseling, and will be allotted sufficient official time to implement the program effectively. At a minimum, persons designated as Employee Assistance Counselors should be, or provisions should be made for them to be:

(a) Familiar with the provisions of Executive Order 12564, "Drug-Free Federal Workplace" and Federal Personnel Manual Letter 792-19, "Establishing a Drug-Free Federal Workplace".

(b) Trained in:

- counseling employees in the occupational setting,
- identification of drug abuse, and,
- administering the Employee Assistance Program.

(c) Able to communicate effectively with employees, supervisors and managers concerning drug use and its symptoms and consequences.

(d) Knowledgeable about community resources for treatment and rehabilitation of drug users, including information on fees and payment schedules.

(e) Able to discuss drug treatment and rehabilitation insurance coverage available to employees through the Federal Employee Health Benefits Program.

(f) Able to distinguish the occasional user from the addicted user and to suggest the appropriate treatment based on that information (e.g., after hours attendance at Narcotics Anonymous meetings to significant medical assistance).

(g) Able to provide training and education on drug abuse to employees, supervisors, union representatives, etc.

(2) In offices where counseling staff is not available within the agency, reasonable efforts should be made to provide employees with access to a qualified counselor outside of the agency. This may include authorizing official time for the employee to visit or be visited by a counselor personally, or other steps which may be appropriate.

(3) For employees referred as a result of drug-testing, counselors should document the treatment plan prescribed. Signature on this document by both the counselor and client will ensure mutual understanding of the treatment plan and the consequences of failure to remain drug free.

(4) In order for the counselor to be viewed as the source of assistance and understanding for employees, the person(s) performing these functions should not be involved in the actual drug testing of employees.

D. *Employee's Role.* All employees are encouraged to enhance their drug awareness through educational opportunities afforded by the EAP or the community at large. Employees who are illegal drug users are encouraged to seek counseling assistance voluntarily. Employees found to be users of illegal drugs are required to accept referral to the EAP and are urged to cooperate with medical treatment and/or rehabilitation programs that are indicated.

E. Medical Personnel.

(1) Employee health units provide emergency diagnoses and first treatment of injury or illness of employees during duty hours. Where indicated, the employee should be further referred to a private physician or

community health service. If such cases ultimately are determined to have stemmed from abuse of drugs, medical personnel should discuss the facts of the situation with the supervisor and the employee and refer the employee for counseling. A close working relationship with the EAP Counselor(s) is essential for program success. The Health Unit staff is available for consultation with and assistance to personnel assigned EAP responsibilities.

(2) Where such facilities do not exist, these services are provided whenever possible through existing occupational health facilities and/or community physicians or clinics.

6. Training and Education.

A. *Supervisory training.* Employee counselors will conduct or otherwise provide training sessions for agency supervisors on the handling of problems of substance abuse. Appropriate topics include:

(1) Drug awareness and symptoms of drug use.

(2) Recommended methods for dealing with the suspected or identified drug user.

(3) Supervisory responsibilities under E.O. 12564.

(4) Confrontation and referral techniques.

(5) Explanation of the (agency) employee assistance program and its relationship with the (agency) drug testing program.

(6) General principles of rehabilitation including techniques for supervisors to assist employees in returning to the worksite, given specific (agency) needs and requirements.

(7) Personnel management issues (e.g., relationship of this program to performance appraisal and disciplinary programs; leave usage; and, supervisory notes and documentation).

B. *Employee education.* The Employee Assistance Coordinator will ensure that employee seminars on topics dealing with drug use are provided periodically. Managers and supervisors shall encourage employee attendance at these seminars and provide other appropriate support. On a continuing basis, educational materials and information on drug abuse will be available to individual employees.

7. Publicity of EAP to employees.

A. This policy and program will be made known to all (agency) employees. All new employees will be informed of the services available under this program as they enter on duty.

B. The names and locations of Employee Assistance Counselor(s) should be listed in telephone directories and displayed on employee bulletin boards.

C. Periodic employee memoranda and other appropriate publications should be used to keep employees informed of EAP services.

8. Short-term Counseling and Referral.

A. Referrals to the Employee Assistance Program are for the purposes of identifying the problem, referring the employee to the appropriate treatment resource in the community and following up with the employee during recovery and rehabilitation.

B. *Voluntary referrals*, or self referrals, are to be encouraged throughout EAP materials.

C. In the case of a *management referral* as a result of a verified positive drug screen, the employee assistance staff will interview and/

or consult with supervisors and management officials, as requested, and provide them with guidance to how to refer the drug abusing employee to the assistance program. Once the referral is made, and the employee agrees to the appointment with the counselor, the counselor will require the employee to sign a consent for release of information to the supervisor before assistance will be provided. This consent will cover the release of information pertaining to the employee's compliance with the agreed upon treatment plan and the employee's progress during and at the end of treatment. Upon obtaining the signed consent, the counselor will assess the problem(s), review the employee's health insurance coverage and refer the individual to an appropriate treatment resource in the Community. The counselor will monitor the employee's treatment and keep the supervisor advised as to the progress being made. The counselor will periodically follow-up with the employee and his or her supervisor after any treatment which occurs and offer support and assistance as needed.

9. *Community Resources.* The EAP will develop a working relationship with community assistance resources. Program coordinators and counselors will determine which community agencies or individuals best meet employee and management needs. Contact should be established with specialized resources such as the following:

A. State drug authorities for help in identifying treatment resources for drug abusing employees;

B. Narcotics Anonymous for information on where and when meetings are held;

C. Hospital and clinic treatment facilities in order to establish a working relationship between the counselor and the receiving treatment source; and,

D. Drug abuse councils to keep abreast of the latest development regarding drug abuse.

10. Program Interrelationships.

A. *Relationship With Drug Testing Program.* As called upon, the EAP staff will work with the drug testing program staff in the development and implementation of the drug testing program. However, EAP staff are not to be involved in the collection of urine samples or the initial reporting of drug test results. EAP efforts are to focus on counseling and rehabilitating drug-abusing employees, as well as on educating the workforce regarding drug abuse and its symptoms.

B. *Relationship of the Supervisor.* Supervisors have explicit expectations of their employees in terms of job performance and behavior. When supervisors are advised of verified employee drug use, they are required to refer the employee to an Employee Assistance Program and to initiate an appropriate personnel action. In those situations involving illegal drugs, except as provided in section 5(b) of Executive Order 12564, disciplinary action is required to be initiated against employees who are found to use illegal drugs. Supervisors should work with the Employee Assistance Counselor to monitor the employee's progress during treatment and rehabilitation and take appropriate personnel action should the employee fail to remain drug free.

C. Relationship With Labor Organizations. The support and active participation of labor organizations is a key element in the success of an employee assistance program. Therefore, where there are units of exclusive recognition, management should:

(1) Communicate to labor organizations a strong commitment to providing assistance to employees.

(2) Consult or negotiate, as appropriate, concerning the implementation of the EAP.

(3) Include union representatives in appropriate training and orientation programs to ensure a mutual understanding of program policy, referral procedures, and other program elements.

11. Recordkeeping and Reporting.

A. Counseling Records. Records on employees who have been referred for counseling will be maintained in a secure and confidential manner. Information on any drug abuse client will be released only to the management official empowered to recommend or take action, in accordance

with the employee's consent to release, and for the reasons identified in section 8C above. Any information obtained by a supervisor from the counselor must be maintained, as with all employee records, in a strictly confidential manner. In addition, to the extent that counseling records include employee treatment records, they shall be maintained in accordance with Public Law 93-579 (Privacy Act), Public Law 93-282 and 42 CFR Part 2 (Confidentiality of Alcohol and Drug Abuse Patient Records). Consequently, access to these records will be strictly limited. All appropriate steps, including necessary physical safeguards, will be taken to ensure against unauthorized disclosure.

B. Reports to OPM. The EAP Administrator will compile sufficient statistical and programmatic data to provide the basis for evaluating the extent of drug abuse problems and effectiveness of the assistance program. The EAP Administrator will also submit agency-wide reports to the Office of Personnel Management that contain data

required by OPM to meet the statutory reporting requirements contained in Public Law 99-570.

12. Program Evaluation. The EAP Administrator and Coordinators will regularly evaluate their program to determine the effectiveness and efficiency of services. These evaluations will include: services to employees with drug abuse problems, referral procedures and effectiveness, supervisory training, employee orientation, reporting systems, availability and accessibility of EAP, records systems, outreach activities, staffing and qualifications procedures. Written evidence of program evaluations, identified deficiencies and correction plans will be available for review by the EAP Administrator. Documented modifications in the program's assessment and intervention services should be made based upon the findings of such evaluations.

[FR Doc. 89-26573 Filed 11-9-89; 8:45 am]

BILLING CODE 5325-01-M

The following table shows the number of persons who have been convicted of the various crimes mentioned in the preceding table, and the number of persons who have been sentenced to the various punishments mentioned in the preceding table, for the years 1944-1945 to 2024-2025.

Year	Crimes	Punishments
1944-1945	100	50
1945-1946	120	60
1946-1947	150	75
1947-1948	180	90
1948-1949	200	100
1949-1950	220	110
1950-1951	250	125
1951-1952	280	140
1952-1953	300	150
1953-1954	320	160
1954-1955	350	175
1955-1956	380	190
1956-1957	400	200
1957-1958	420	210
1958-1959	450	225
1959-1960	480	240
1960-1961	500	250
1961-1962	520	260
1962-1963	550	275
1963-1964	580	290
1964-1965	600	300
1965-1966	620	310
1966-1967	650	325
1967-1968	680	340
1968-1969	700	350
1969-1970	720	360
1970-1971	750	375
1971-1972	780	390
1972-1973	800	400
1973-1974	820	410
1974-1975	850	425
1975-1976	880	440
1976-1977	900	450
1977-1978	920	460
1978-1979	950	475
1979-1980	980	490
1980-1981	1000	500
1981-1982	1020	510
1982-1983	1050	525
1983-1984	1080	540
1984-1985	1100	550
1985-1986	1120	560
1986-1987	1150	575
1987-1988	1180	590
1988-1989	1200	600
1989-1990	1220	610
1990-1991	1250	625
1991-1992	1280	640
1992-1993	1300	650
1993-1994	1320	660
1994-1995	1350	675
1995-1996	1380	690
1996-1997	1400	700
1997-1998	1420	710
1998-1999	1450	725
1999-2000	1480	740
2000-2001	1500	750
2001-2002	1520	760
2002-2003	1550	775
2003-2004	1580	790
2004-2005	1600	800
2005-2006	1620	810
2006-2007	1650	825
2007-2008	1680	840
2008-2009	1700	850
2009-2010	1720	860
2010-2011	1750	875
2011-2012	1780	890
2012-2013	1800	900
2013-2014	1820	910
2014-2015	1850	925
2015-2016	1880	940
2016-2017	1900	950
2017-2018	1920	960
2018-2019	1950	975
2019-2020	1980	990
2020-2021	2000	1000
2021-2022	2020	1010
2022-2023	2050	1025
2023-2024	2080	1040
2024-2025	2100	1050

Reader Aids

Federal Register

Vol. 54, No. 21

Monday, November 13, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230
---------------------	----------

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rule:	
305.....	46734

3 CFR

Proclamations:	
6058.....	46348
6059.....	46355
6060.....	46357
6061.....	46187
6062.....	46189
6063.....	47191

Executive Orders:	
12170 (See Order of	
Oct. 30, 1989).....	46043
12695.....	46589

Administrative Orders:	
Memorandums:	
October 26, 1989.....	46591
October 31, 1989.....	46593
Orders:	
Oct. 30, 1989.....	46043

5 CFR

Proposed Rules:	
890.....	46621

7 CFR

354.....	46595
905.....	46596, 46597
906.....	46599
907.....	46359, 47193
910.....	46361, 47195
911.....	46713, 46839
917.....	46714
920.....	46715
926.....	46600
932.....	46221, 46841
944.....	46841
947.....	46716
948.....	46601
955.....	46603
966.....	46604
971.....	46842
981.....	46605
982.....	46718
989.....	46722
1036.....	46361
1139.....	46723
1230.....	46222
1475.....	46607
1823.....	47195
1902.....	47195
1942.....	47195
1948.....	47195
1944.....	46843
1951.....	46843

Proposed Rules:	
905.....	46621
919.....	46903

989.....	46269
1001.....	46904
1002.....	46904
1004.....	46904
1005.....	46904
1008.....	46904
1007.....	46904
1011.....	46904
1012.....	46904
1013.....	46904
1030.....	46904
1032.....	46904
1033.....	46904
1036.....	46904
1040.....	46904
1046.....	46904
1049.....	46904
1050.....	46904
1064.....	46904
1065.....	46904
1068.....	46904
1076.....	46904
1079.....	46904
1093.....	46904
1094.....	46904
1096.....	46904
1097.....	46904
1098.....	46904
1099.....	46904
1106.....	46904
1108.....	46904
1120.....	46904
1124.....	46904
1126.....	46904
1131.....	46904
1132.....	46904
1134.....	46904
1135.....	46904, 47215
1137.....	46904
1139.....	46904
1139.....	46904
1762.....	46187
1772.....	46071
1948.....	47216
3402.....	47306

9 CFR

Proposed Rules:	
92.....	46623

10 CFR

Proposed Rules:	
Ch. I.....	46394
50.....	46624
34.....	47089
764.....	46072

12 CFR

309.....	46363
561.....	46845
583.....	46845
567.....	46845

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

46043-46220.....	1
46221-46354.....	2
46355-46590.....	3
46591-46712.....	6
46713-46838.....	7
46839-47074.....	8
47075-47190.....	9
47191-47338.....	13

701.....46222	19 CFR	904.....46506	263.....46064
Proposed Rules:	111.....47203	905.....46506	280.....46064
3.....46394	Proposed Rules:	913.....46506	300.....46064
13 CFR	4.....46075	960.....46506	303.....46064
101.....47075	142.....47219	3280.....46049	307.....46064
115.....47166	20 CFR	25 CFR	345.....46064
14 CFR	Proposed Rules:	38.....46373	379.....46064
11.....46774	212.....47220	26 CFR	425.....46064
13.....46774	602.....46708	1.....46187, 46374, 46375	426.....46064
14.....46196	21 CFR	301.....46382	432.....46064
15.....46774	430.....47203	602.....46187, 46374, 46375	433.....46064
21.....46774	436.....47203	28 CFR	434.....46064
27.....47310	440.....47203	73.....46608	435.....46064, 46065
29.....47310	442.....47203	29 CFR	436.....46064, 46065
39.....46045, 46365-46371, 46274-46727, 46875-46885 47197-47200	446.....47203	1910.....46610	437.....46064, 46065
43.....46724	455.....47203	30 CFR	438.....46064, 46065
45.....46724	864.....47205	914.....46049	441.....46064
61.....46724	880.....47205	938.....46383	548.....46064
63.....46724	22 CFR	Proposed Rules:	608.....46064
65.....46724	Proposed Rules:	914.....46076, 46077	654.....46064
67.....46724	35.....46405	936.....46078	673.....46692
71.....46046, 46047, 46187, 46226, 46371, 46372, 46887	23 CFR	31 CFR	668.....46064, 46536
73.....46724, 46887	635.....47075	240.....46728	682.....46064
75.....46888	710.....47075	316.....46053	690.....46064
77.....46724	712.....47075	342.....46053	745.....46064
91.....46724	713.....47075	351.....46053	755.....46064
93.....46724	720.....47075	32 CFR	757.....46064
97.....47201	740.....47075	51.....46227	758.....46064
109.....46724	751.....47075	159a.....46610	785.....46064
121.....46724	Proposed Rules:	199.....46728	786.....46064
125.....46724	Ch. I.....46326	Proposed Rules:	787.....46064
127.....46724	Ch. II.....46326	199.....46414	36 CFR
129.....46724	Ch. III.....46326	297.....46420	217.....46892
133.....46724	24 CFR	33 CFR	Proposed Rules:
135.....46724	90.....46566	100.....46889	7.....46422
137.....46724	570.....47024	147.....46230	37 CFR
139.....46724	576.....46793	165.....46889, 47206	1.....46231
141.....46724	577.....47024	Proposed Rules:	2.....46231
145.....46724	578.....47024	Ch. I.....46326	307.....46065
150.....46724	579.....46812	Ch. IV.....46326	38 CFR
153.....46724	812.....46828	110.....46736	1.....46187
169.....46724	840.....47024	34 CFR	8.....46231
171.....46724	841.....47024	75.....46064	17.....46611
183.....46724	882.....46270, 46828	76.....46064	Proposed Rules:
185.....46724	Proposed Rules:	77.....46064	3.....46270, 46629
189.....46724	200.....46227, 46506	78.....46064	36.....46079, 47220
191.....46724	203.....46227	81.....46064	39 CFR
199.....46724	204.....46227	200.....46064	Proposed Rules:
Proposed Rules:	213.....46227	203.....46064	3001.....47223
Ch. I.....46326	215.....46506	204.....46064	40 CFR
Ch. II.....46326	220.....46227	205.....46064	52.....46232, 46233, 46386, 46611, 46612, 46894-46896, 47077, 47210, 47211
39.....46400-46404, 46915 47216-47217	221.....46227, 46506	208.....46064, 47303	60.....46234, 46236
43.....46736	222.....46227	212.....46064	116.....47022
65.....46736	234.....46227	222.....46064, 47076	117.....47022
71.....46072-46074, 46918	235.....46227	245.....46064	180.....46066-46068
145.....46736	236.....46506	246.....46064	185.....46068
16 CFR	240.....46227	247.....46064	280.....47077
305.....46888	247.....46506	250.....46064	302.....47022
Proposed Rules:	290.....46506	251.....46064	763.....46897
703.....47091	760.....46506	252.....46064	799.....47082
17 CFR	813.....46506	253.....46064	Proposed Rules:
3.....46503	880.....46506	254.....46064	52.....46271, 46422, 46631
31.....46503	881.....46506	255.....46064	180.....46081-46084
200.....46373	882.....46270	256.....46064	261.....46737
18 CFR	883.....46506	257.....46064	307.....46423
270.....47022	884.....46506	258.....46064	372.....46424
271.....46047	885.....46506		435.....46919
	886.....46506		
	887.....46506		
	900.....46506		

41 CFR	
Proposed Rules:	
101-17.....	46206
101-40.....	46244

42 CFR	
424.....	46614
Proposed Rules:	
400.....	46937
410.....	46937
414.....	46937, 46938
417.....	46937
424.....	46937
466.....	46937
473.....	46937
485.....	46937
489.....	46937

43 CFR	
Public Land Orders:	
6751.....	46898

44 CFR	
64.....	46069, 46245
65.....	46248
Proposed Rules:	
67.....	46426

46 CFR	
572.....	46249
Proposed Rules:	
Ch. I.....	46326
Ch. II.....	46326
Ch. III.....	46326
174.....	46631
572.....	46273

47 CFR	
15.....	46729
73.....	46250, 46251, 46614, 46615, 46729, 46898-46900
Proposed Rules:	
52.....	47228
63.....	47228
61.....	47228
73.....	46274, 46275, 46632- 46635, 46743
164.....	47234

48 CFR	
Ch. II.....	46902
204.....	46901
205.....	46901
245.....	46902
252.....	46901
706.....	46389
714.....	46389
715.....	46389
716.....	46389
731.....	46389
732.....	46389
736.....	46389
752.....	46389
802.....	47086
Proposed Rules:	
15.....	47182
31.....	47182
52.....	47182
217.....	46953
252.....	46953

49 CFR	
1.....	46616
391.....	46616
544.....	46252

567.....	46253
571.....	46253, 46257
592.....	47087
1054.....	46618

Proposed Rules:	
Subtitle A.....	46326
Ch. I.....	46326
Ch. II.....	46326
Ch. III.....	46326
Ch. IV.....	46326
Ch. V.....	46326
Ch. VI.....	46326
21.....	46085
190.....	46684
192.....	46685
193.....	46684
195.....	46684, 46685
392.....	47092
393.....	47092
571.....	46275
1022.....	47243
1043.....	47243
1044.....	47243
1047.....	47243
1051.....	47243
1058.....	47243
1061.....	47243
1063.....	47243
1067.....	47243
1070.....	47243
1080.....	47243
1081.....	47243
1083.....	47243
1084.....	47243
1085.....	47243
1091.....	47243
1104.....	47243
1136.....	47243
1143.....	47243
1161.....	47243
1167.....	47243
1169.....	47243
1170.....	47243
1331.....	47243

50 CFR	
32.....	46730
672.....	47212
675.....	46268, 46619
Proposed Rules:	
17.....	46956
33.....	46427
216.....	46086
222.....	47094
611.....	46743-46748
672.....	46743
675.....	46748

LIST OF PUBLIC LAWS

Last List November 7, 1989

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government

Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.J. Res. 280 / Public Law 101-140 Increasing the statutory limit on the public debt (Nov. 8, 1989; 103 Stat. 830; 6 pages) Price: \$1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is \$620.00 domestic, \$155.00 additional for foreign mailing.

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Title	Price	Revision Date
1, 2 (2 Reserved)	\$10.00	Apr. 1, 1989
3 (1988 Compilation and Parts 100 and 101)	21.00	Jan. 1, 1989
4	15.00	Jan. 1, 1989
5 Parts:		
1-699	15.00	Jan. 1, 1989
700-1199	17.00	Jan. 1, 1989
1200-End, 6 (6 Reserved)	13.00	Jan. 1, 1989
7 Parts:		
0-26	15.00	Jan. 1, 1989
27-45	12.00	Jan. 1, 1989
46-51	17.00	Jan. 1, 1989
52	23.00	* Jan. 1, 1988
53-209	18.00	Jan. 1, 1989
210-299	24.00	Jan. 1, 1989
300-399	12.00	Jan. 1, 1989
400-699	19.00	Jan. 1, 1989
700-899	22.00	Jan. 1, 1989
900-999	28.00	Jan. 1, 1989
1000-1059	16.00	Jan. 1, 1989
1060-1119	13.00	Jan. 1, 1989
1120-1199	11.00	Jan. 1, 1989
1200-1499	20.00	Jan. 1, 1989
1500-1899	10.00	Jan. 1, 1989
1900-1939	11.00	Jan. 1, 1989
1940-1949	21.00	Jan. 1, 1989
*1950-1999	22.00	Jan. 1, 1989
2000-End	9.00	Jan. 1, 1989
8	13.00	Jan. 1, 1989
9 Parts:		
1-199	20.00	Jan. 1, 1989
200-End	18.00	Jan. 1, 1989
10 Parts:		
0-50	19.00	Jan. 1, 1989
51-199	17.00	Jan. 1, 1989
200-399	13.00	* Jan. 1, 1987
400-499	14.00	Jan. 1, 1989
500-End	28.00	Jan. 1, 1989
11	10.00	* Jan. 1, 1988
12 Parts:		
1-199	12.00	Jan. 1, 1989
200-219	11.00	Jan. 1, 1989
220-299	19.00	Jan. 1, 1989
300-499	15.00	Jan. 1, 1989
500-599	20.00	Jan. 1, 1989
600-End	14.00	Jan. 1, 1989
13	22.00	Jan. 1, 1989
14 Parts:		
1-59	24.00	Jan. 1, 1989
60-139	21.00	Jan. 1, 1989

Title	Price	Revision Date
140-199	10.00	Jan. 1, 1989
200-1199	21.00	Jan. 1, 1989
1200-End	12.00	Jan. 1, 1989
15 Parts:		
0-299	12.00	Jan. 1, 1989
300-799	22.00	Jan. 1, 1989
800-End	14.00	Jan. 1, 1989
16 Parts:		
0-149	12.00	Jan. 1, 1989
150-999	14.00	Jan. 1, 1989
1000-End	19.00	Jan. 1, 1989
17 Parts:		
1-199	15.00	Apr. 1, 1989
200-239	16.00	Apr. 1, 1989
240-End	22.00	Apr. 1, 1989
18 Parts:		
1-149	16.00	Apr. 1, 1989
150-279	16.00	Apr. 1, 1989
280-399	14.00	Apr. 1, 1989
400-End	9.50	Apr. 1, 1989
19 Parts:		
1-199	28.00	Apr. 1, 1989
200-End	9.50	Apr. 1, 1989
20 Parts:		
1-399	13.00	Apr. 1, 1989
400-499	24.00	Apr. 1, 1989
500-End	28.00	Apr. 1, 1989
21 Parts:		
1-99	13.00	Apr. 1, 1989
100-169	15.00	Apr. 1, 1989
170-199	17.00	Apr. 1, 1989
200-299	6.00	Apr. 1, 1989
300-499	28.00	Apr. 1, 1989
500-599	21.00	Apr. 1, 1989
600-799	8.00	Apr. 1, 1989
800-1299	17.00	Apr. 1, 1989
1300-End	6.50	Apr. 1, 1989
22 Parts:		
1-299	22.00	Apr. 1, 1989
300-End	17.00	Apr. 1, 1989
23	17.00	Apr. 1, 1989
24 Parts:		
0-199	19.00	Apr. 1, 1989
200-499	28.00	Apr. 1, 1989
500-699	11.00	Apr. 1, 1989
700-1699	23.00	Apr. 1, 1989
1700-End	13.00	Apr. 1, 1989
25	25.00	Apr. 1, 1989
26 Parts:		
§§ 1.0-1.160	15.00	Apr. 1, 1989
§§ 1.61-1.169	25.00	Apr. 1, 1989
§§ 1.170-1.300	18.00	Apr. 1, 1989
§§ 1.301-1.400	15.00	Apr. 1, 1989
§§ 1.401-1.500	28.00	Apr. 1, 1989
§§ 1.501-1.640	16.00	Apr. 1, 1989
§§ 1.641-1.850	19.00	Apr. 1, 1989
§§ *1.851-1.1000	31.00	Apr. 1, 1989
§§ 1.1001-1.1400	17.00	Apr. 1, 1989
§§ 1.1401-End	23.00	Apr. 1, 1989
2-29	20.00	Apr. 1, 1989
30-39	14.00	Apr. 1, 1989
40-49	13.00	Apr. 1, 1989
50-299	16.00	Apr. 1, 1989
300-499	16.00	Apr. 1, 1989
500-599	7.00	Apr. 1, 1989
600-End	6.50	Apr. 1, 1989
27 Parts:		
1-199	24.00	Apr. 1, 1989
200-End	14.00	Apr. 1, 1989
28	25.00	July 1, 1988

Title	Price	Revision Date	Title	Price	Revision Date
29 Parts:			42 Parts:		
*0-99.....	17.00	July 1, 1989	1-60.....	15.00	Oct. 1, 1988
100-499.....	7.50	July 1, 1989	61-399.....	5.50	Oct. 1, 1988
*500-899.....	26.00	July 1, 1989	400-429.....	22.00	Oct. 1, 1988
900-1899.....	12.00	July 1, 1989	430-End.....	22.00	Oct. 1, 1988
1900-1910.....	29.00	July 1, 1988	43 Parts:		
1911-1925.....	9.00	July 1, 1989	1-999.....	15.00	Oct. 1, 1988
1926.....	10.00	July 1, 1988	1000-3999.....	26.00	Oct. 1, 1988
1927-End.....	24.00	July 1, 1988	4000-End.....	11.00	Oct. 1, 1988
30 Parts:			44.....	20.00	Oct. 1, 1988
*0-199.....	21.00	July 1, 1989	45 Parts:		
200-699.....	14.00	July 1, 1989	1-199.....	17.00	Oct. 1, 1988
700-End.....	18.00	July 1, 1988	200-499.....	9.00	Oct. 1, 1988
31 Parts:			500-1199.....	24.00	Oct. 1, 1988
*0-199.....	14.00	July 1, 1989	1200-End.....	17.00	Oct. 1, 1988
200-End.....	17.00	July 1, 1988	46 Parts:		
32 Parts:			1-40.....	14.00	Oct. 1, 1988
1-39, Vol. I.....	15.00	⁴ July 1, 1984	41-69.....	14.00	Oct. 1, 1988
1-39, Vol. II.....	19.00	⁴ July 1, 1984	70-89.....	7.50	Oct. 1, 1988
1-39, Vol. III.....	18.00	⁴ July 1, 1984	90-139.....	12.00	Oct. 1, 1988
1-189.....	21.00	July 1, 1988	140-155.....	12.00	Oct. 1, 1988
190-399.....	27.00	July 1, 1988	156-165.....	13.00	Oct. 1, 1988
400-629.....	21.00	July 1, 1988	166-199.....	14.00	Oct. 1, 1988
630-699.....	13.00	July 1, 1989	200-499.....	20.00	Oct. 1, 1988
700-799.....	15.00	July 1, 1988	500-End.....	10.00	Oct. 1, 1988
800-End.....	19.00	July 1, 1989	47 Parts:		
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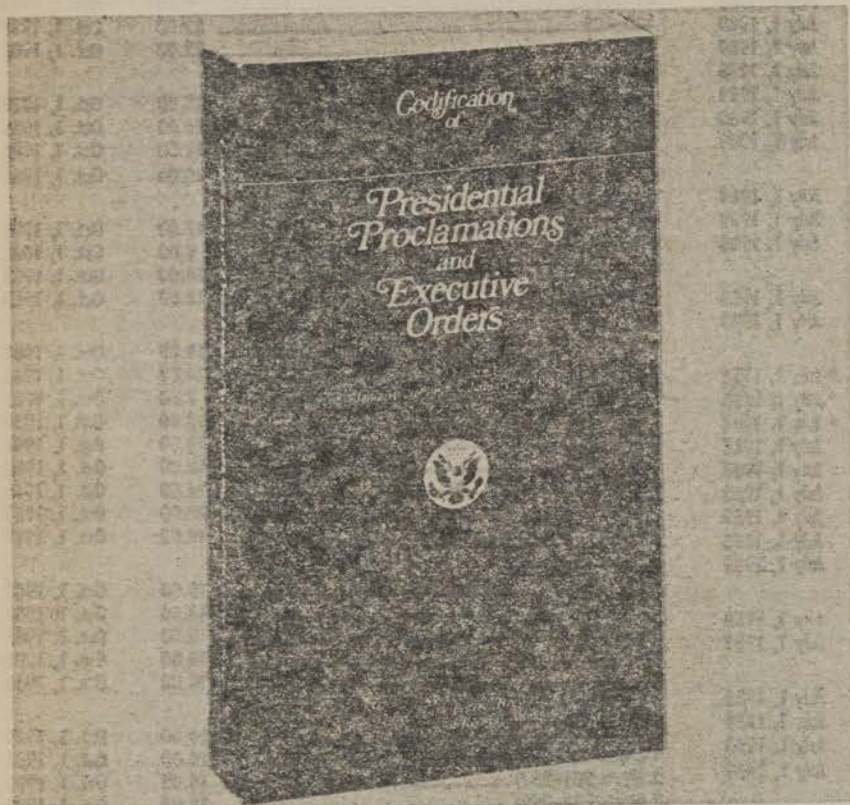
² No amendments to this volume were promulgated during the period Jan. 1, 1988 to Dec. 31, 1988. The CFR volume issued January 1, 1988, should be retained.

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⁴ The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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